JURA CORONÆ.

HIS [redacted]

MAJESTIES Royal Rights AND Prerogatives ASSERTED,

Against *Papal Usurpations*, and all other *Anti-Monarchical* Attempts and *Practices*.

Collected out of the Body of the Municipal LAWS of ENGLAND.

By John Brydall, Esq.

Reddite Cæsaris, Cæsari.

LONDON,

Printed for *George Dawes*, and are to be sold at his Shop in *Chancery-Lane*, against *Lincoln-Inn-Gate*, MDCLXXX.

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Hhh 850

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18...747

The Epistle to the READER.

Courteous Reader,

I *Must entertain thee a while, with a few* Particulars, *as a* Procatarctick, *or* Preface *to the ensuing* Discourse.

First, The exposing of this Piece to the World, is not only to vindicate the Prime, Radical, Essential Constitutions *of the* Imperial Diadem *against* Papal Tyranny, *and all other* Attempts *and* Practices, *Prejudicial to* Monarchy; *but likewise to shew thee in Particular, what are the* Prerogatives *inherent in the* Crown, Incommunicable *to the Subject, and*

therewithal to intimate what great Solicitude *and* Care, *our Laws* (*the sole Creatures of* Sovereign Power,) *have alwayes had, as well of the* Honour *and* Safety *of their* Supreme Creator, *the King, as of his* Royal Rights, *and the Peoples* Security.

Secondly, I do not, in asserting the Sacred Rights *and* Prerogatives *of his most* Serene Majesty, *plead for a* Despotical Sovereignty, *which is an absolute Power the* Grand-Seignior *heretofore enjoy'd, and at this Day exercises over his Subjects. I endeavour only to maintain such* Royal, *Ancient Setled, Paternal* Authority, *as we and our* Ancestors, *have lived long and happily under: A* Government *indeed not only* Royal, *but* Politick, *which by an* Admirable Temperament, gives very much to Subjects Industry, Liberty and Happiness, and yet reserves enough to the Majesty

jesty and Prerogative of any King, who owns his People as Subjects, not as Slaves; *As the* Regal Proto-Martyr *hath been pleased to express himself. Thus wisely mingled, each to guard the other, makes the* Regiment *exact*; Ut Summæ potestatis Regis est posse, quantum velit, sic Magnitudinis est velle, quantum possit.

Lastly, If I have in the handling of this High and Sacred Theme, *either omitted any thing pertinent, or admitted ought, that is* Superfluous, *I hope the* Ingenious *will wink at such* Jeofails; *as for the* Malitious, *seeing I cannot look for any favourable Acceptance from them, I weigh not their Verdict, and I am encourag'd so to do, by the Prince of our* English Philosophers, *who has taught me this good Lesson*, When a man speaks, he may be wounded by others, but if he

holds his Peace from good things, he wounds himself. *To be short, I value not Safety, or that fond thing called* Self-Preservation, *in Comparison of honest (though weak Endeavours,) to do Service to the* Publick, *I mean to* Church *and* State, Prince *and* Priest, Regality *and* Supremacy, *that are so nearly conjoyn'd in a mutual Interest, that like to* Hippocrates *his Twinns, they Rejoyce and Mourn, Flourish and Perish, Live and Dye together.*

The

The Sum, Method, and Order of the Enſuing Treatiſe.

THE Author in defending the Sacred Rights and Royal Prerogatives of the Imperial Crown of *England*, againſt all Popiſh and Puritanical Encroachments; hath propoſed to himſelf this Order and Method following, *viz.*

Firſt, are ſet down the ſeveral Appellatives, or Names given to the Sovereign Power by the Attick, Imperial, and *Britanick Juriſts. pag.* 1, 2.

Secondly, The King of *England*'s Sovereignty, is deſcribed *pag.* 2.

Out of this Deſcription, are drawn and clearly proved theſe particularities.

1. *That the Royal Eſtate and Dignity of our Prince, is Imperial, acknowledg-*

ing no Peer much leſs Superiour; and that either in Church or State. pag. 3, 4, 5, 6. *Incidently is handled his Majeſties Superiority (as King of* England) *over* Scotland. *p.* 7, 8, 9. *His Dominion Superiour over* Wales *and* Ireland. *p.* 9, 10. *Together with the King of* England's *juſt Title to the* French *Crown, and a Refutation of the Law* Salique, *diſcovering the Fiction of it; and that it was a meer Invention to exclude the Lawful Right of our Kings, and had been ill obſerved by the* French *themſelves, when it did not conduce to their Advantage. p.* 10, 11, 12, 13, 14, 15, 16, 17.

2. *That the Sovereignty of this Realm is an undivided Entity, excluding all Coordinate, Coequal, and Collateral Power, with the Sovereignty of Royalty, wherein is likewiſe diſcuſſed that* Romiſh *Diſtinction of things,* viz. *Into Spiritual and Temporal; together with ſeveral Arguments offered againſt Coordination, or a mixt Monarchy. p.* 17, 18, 19, 20, 21, 22, 23.

3. *That*

3. *That the* Sovereign *Power of our Kings is incommunicable, that is to ſay, the Eſſential Attributes of Regal Power, may in the Exerciſe of them, be entruſted to the Subject; ſo that they have it only by Delegation and Truſt, not ſo, that theſe Delegates are inveſted ſo with it, as the King is totally diveſted.* p. 24,25,26.

4. *That the Regality or Dignity Royal of* England, *cannot be transferred to any other Potentate; Together with Authorities from Law and Reaſon, to prove, That the Deſcent of the Crown cannot be* Via Juris, *impeached in the Right Line.* p. 26, 27, 28,29,30,31,32.33.

Thirdly, The Royal Pedigree from *H.* 7. to this day is ſet forth, *&c.* p. 33. 34,35,36,37,38.

Fourthly, To His Moſt Excellent Majeſty, as King of *England*, appertain theſe following Prerogatives:

1. *The King is* Legibus Solutus, *ſubject to no over-ruling Power of Man, free from Coercion Humane, or any Humane Coactive Power, to puniſh, cenſure or depoſe him.* p. 39,40,41.

2. *In the King is vested the Architectonique Power Paramount of making Laws in Parliament, so as the Office of the two Houses is only Consultive, but the Character of the Power rests in the final Sanction, which is in the King.* p. 42,43,44,45,46,47,48. *Whereunto is added, that the Right of interpreting Laws belongs solely to the King.* p. 84.

3. *The Calling, Adjourning, Proroguing, and dissolving of Parliaments is a Privilege inseparably annex'd to the Imperial Crown.* p. 48,49,50.

4. *The King is armed with Power of Life and Death; It is his Royal Pleasure, whether to punish or pardon Offences, that are perpetrated against* his Crown and Dignity. p. 50,51.

5. *Power of restoring infamous Persons to their former Credit and Reputation; of delivering them not only from the Punishment, but also from the Reproach of their former Miscarriages.* p. 52,53.

6. Judiciaria Potestas. *The Power to judge in all Cases, Criminal and Civil, which concerns the Subjects and Kingdom, is inherent essentially in the Crown*

Crown and Scepter of the King; and he to ease his Burthen, and that Justice may the more readily and easily be done, intrusteth the Judges with it. p. 54, 55, 56.

7. *The Power of Raising of Forces or Armies, or Levying of War, for the Defence of the Kingdom or otherwise; together with the Supreme Disposition of the Militia belongs to the King, and to him only.* p. 57, 58, 59, 60.

8. *Power of making Peace, Leagues and Truces with Foreign Princes and States, resides solely in the King.* p. 60, 61, 62.

9. *None but the King can either constitute or receive Ambassadours.* p. 63, 64.

10. *The Right of Coynage is inseparably annext to the Imperial Diadem, together with that of making any Foreign Coyne lawful Money of England.* p. 64, 65, 66,

11. *The Power of Nobilitating; of bestowing Honours, as Dukedoms, Baronies, Knighthoods &c. is an Incident inseparable of Royal Majesty.* p. 66, 67.

12. *To the King only belongs the highest Care and Management of all Ecclesiastical Affairs in the Church; the Exercise of Supreme Ecclesiastical Authority being one of those Flowers that makes the Royal Crown and Diadem in full Force and Virtue; together with Answers given by the Author to several Objections of the* Papalini. *p.* 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80.

13. *The last Appellation both in Ecclesiastical and Temporal Causes, appertains to the Sacred Majesty of* England. *p.* 80, 81, 82,

14. *The Power of erecting Corporations, Guilds, and Fraternities, as well Spiritual as Temporal.* *p.* 82, 83, 84,

15. *It is an inseparable Prerogative of Sovereign Power to dispense with Politique Statutes.* *p.* 84, 85. *wherennto are added by the Author several Rules, touching Dispensations and Non-Obstantes.* *p.* 85, 86, 87.

16. *General Words of a Statute, when the King is not named, shall not bind or bar him.* *p.* 88, 89.

17. Sta-

17. *Statutes that concern his Majesty, must be taken Notice of, by the Judges, though they be not pleaded.* p. 89, 90.

18. *No Prescription or Length of time, runneth unto the King, nor can create any Prejudice to his Royal Rights.*

19. *The King is* Dominus super Omnes, *Lord Paramount; All Lands and Tenements in* England, *in the hands of Subjects, are holden mediately or immediately of his Imperial Crown.* p. 91, 92, 93.

20. *When the Safety of the People or Subject is in Danger, then the Supreme Governour is not to take Notice of any mans particular Interest.* p. 93, 94.

21. *All Goods in England, wherein no man hath* Propriety, *appertain to his* Sacred Majesty. p. 95, 96.

22. *The King is Sovereign Lord and Proprietor of the* British *Seas, having enjoyed several Things as special Pledges and Marks of Sea-Dominion, as*

1. Making Laws, and exercising Supreme Naval Jurisdiction over all Persons and in all Cases. 2. Granting Liberty to Foreigners to Fish.

3. Grant-

3. Granting Licenses of Safe Conduct to Strangers. 4. Imposing and Receiving Tribute for the Safeguard of the *English* Seas. 5. Prescribing Limits to Forreigners, that are at Enmity with each other. 6. The striking Sail by Ships of other Nations, passing near the King's Ships, &c. p. 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109.

23. *The Sovereign Lordship of all Navigable Rivers belongs to the Regality of* England, p. 109, 110.

24. *The King is Supreme Lord of all Ports and Havens.* p. 110, 111.

25. *Power of Granting Letters of Reprizal, Marque, and Counter-marque, appertaineth to the Royal Authority of this Realm.* p. 111, 112.

26. *Power of giving Licenses to go beyond the Seas, is an Incident inseparable of the Sovereign Seigniary of* England. p. 112, 113, 114.

27. *Power of granting Liberty of all Franchises belongeth to the Imperial Majesty of* England p. 114, 115.

28. *To the Sovereign Seigniary appertains the Custody of Ideots and Lunaticks.* p. 115, 116.

29. *The*

29. *The King can charge his Subjects at his pleasure, with such things as may be of Profit to the Common People.* p. 116, 117.

30. *Nothing of Royal Rights will pass in the Kings Grants without Express and determinate Words.* p. 117, 118.

31. *Denizating of Aliens, is an Essential of the Imperial Crown.* p. 119, 120.

32. *Right of Tribute, belongs to the Signiory Royal.* p. 120, 121, 122.

33. *To his Majesty is due the highest kind of Love and Ligeance.* p. 123, 124, 125.

34. *and Last* Prerogative, *is* Jus Supplicationum. p. 126, & 127.

Fifthly, a *Postscript*, containing a Prospect of some other Royal Privileges and Preheminencies. p. 127, 128.

Together with a gentle Reprimend for the Ill-luminated Quaker.

Lastly, The *Author's Sentiments*, touching the Three *Species* of Government, *viz.*, *Monarchy*, *Aristocracy*, and *Democracy*. p. 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147.

The

The Reader is desired to Correct these Errors, before he begin the Work. Other smaller Faults of Literal mistakes and pointing, 'tis hoped will be by him passed over, with as much Candor, as with Honesty the Tractate is exposed to Publick View.

ERRATA.

PAge 2 line 22. for the Reader call. r. the Reader may call. p. 8. l. *ult.* for *England*, r. *Scotland*. p. 10. l. 7. for *Absolutus*, r. *Absolutè*. p. 17. l. 4. for she did, r. did she. p. 17. l. 25. for Dignities are deduced, *tanquam lumen de lumine*, are derived, r. Dignities, *tanquam lumen de lumine* are derived. p. 30. l. 26. for *divini*, r. *divimi*. p. 37. l. 1. for Daughter, r. *Douglas*. p. 61. l. 7. for *Pactione* r. *Factiones*. p. 66. l. 4. for *Imperatore* r. *Imperatores*. p. 27. l. 19. for whe there, r. whether there. p. 59. l. 1. for In Ayre r. In the Aire. p. 131. l. 29. for exemption, r. execution. p. 141. l. 10. for their, r. the. p. 142. l. 22. for Comutation, r. Cumulation. p. 143. l. 12. for Communities, r. Community.

THE RIGHTS OF THE *Imperial Crown of* England.

BEfore we ſhall come to give a Definition (or rather a Deſcription) of the Autocratorical Power and Dominion appertaining to the Kings of *England*, it will be neceſſary to preſent to the *Readers* View the ſeveral Appellations which have been given to this ſame Power, by the *Grecian*, *Roman*, and our *Engliſh* Lawyers.

The *Grecians* in their Laws term it, Ἀρχὴν ἐξουσίαν, Κυρίαν Ἀρχὴν, Κύριον πολίτευμα, Αὐτοκρατορίαν, Ἐξουσίαν Αὐτοκρατορικὴν, Ἐξουσίαν ὑφέσχουσαν, Ἐξουσίαν Ἀρχιλεκτονικὴν, ἐξηρημένην Αἰτίαν, πρῶτον Ἀξίωμα, Δύναμιν Ἀναγκαστικὴν.

The

The *Civilians* call it, *Summum Imperium*, *Jura Imperii*, *Summi Imperii Jus*, *Jura Majeſtatis Regiæ*, *Majeſtatis Imperium*, *Majeſtatem*, *Imperii Majeſtatem*, *Majeſtatem Principis Supremam*, *Sacra Regni*, *Regalia*, *Summam Imperii*, *Summum Arbitrium*, *Sacra Sacrorum*, *Dignitatis Præeminentiam*, *Supremam Poteſtatem*, *Poteſtatem Summam*, *Poteſtatem Supereminentem*, *Imperii poteſtatem*, *Authoritatem Supremam*, *Supremitatem*, *Sereniſſimam Majeſtatem Regiam.*

The Appellations among us are ſuch as theſe, *Privilegium Regis*, *Jus Regium*, *Jus Regium Coronæ*, *Droit le Roy*, *Royalty*, *Regality*, *Royal Authority*, *Royal Eſtate*, *Privilege Royal*, *Sovereign Seigniory*, *Royal Dominion*, *Seigniory Royal*, *Imperial Majeſty*, *The Royal Eſtate of the Imperial Crown*, *the Imperial Crown of* England, *Sovereign and Royal Authority*, *Sovereignty*, *Supremacy*, *Prehominence Royal*, *Prerogative Royal*, and the like.---- But the Reader call it what he pleaſes, I thus deſcribe it:

It is the exempt abſolute and independent Power, the Supreme Dignity of *England*, that acknowledgeth no Superior, but God Almighty, not to be Divided, Communicated, nor Transferred to any perſon whatſoever. Out of this Deſcription theſe Four things may be deduced.

1. *That*

1. *That the Kings of* England *did never* de Jure *acknowledge any Superior here on Earth, either in Church or State.*
2. *That the Sovereignty of* England *is Indiviſible.*
3. *That the Regality of this Realm is incommunicable.*
4. *That the Royalty of* England *is Unalienable.*

Theſe Four Deductions ſhall be made good by ſeveral Authorities.

1. *That the Kings of* England *did never acknowledge any Superiour here on Earth either in Church or State.*

IT is Reported, That when *Sigiſmond* the Emperour, Cozen-German to the moſt Victorious Prince King *Henry* the Fifth, accompanied with the Arch-Biſhop of *Rhemes* Ambaſſador from the *French* King, arrived at *Calis*, to whom were ſent ſeveral Great Ships to waft him over: At *Dover*, the Duke of *Glouceſter*, with a brave company of Gallants, upon his approaching to Land with their Swords drawn, ſtept up to their Knees in Water, ſaying, *If he came as the Kings Friend, or for his Honour to move ought, he ſhould be Welcom; but if as an Emperour he claimed any*

Juriſdiction, they were ready to reſiſt him to the laſt drop of their Blood. Whereupon the Emperour renounced all Imperial Authority, Juriſdiction and Sovereignty: And good reaſon there was he ſhould ſo do; ſeeing the Regality of this Nation was never *de Jure* attendant to any Foreign Prince or Potentate, but was ever Imperial, Exempt, Abſolute, Independant, ſubject to none but God, equivalent to that Power that any Supream Princes have at any time in any part of the World (of Right) challenged to themſelves; and this will be apparanted by theſe Authorities following: firſt to begin with the Statute Laws, which are no new Introductive Laws, but explanatory Revivers of the old.

Note that our King, whoſe Government is Politick, is of no leſs Power than he that royally ruleth his People after his own Pleaſure, howbeit they differ in Authority over their Subjects. *Forteſcue* C. 11.

16 *R.* 2. *Cap.* 5. In 16. *R.* 2. It is declared, *That the Crown of* England *hath been free at all times; That it hath been in no Earthly Subjection, but immediately ſubject to God in all things touching the Regality to the ſame Crown and none other.*

24 *H.* 8. *c.* 21. In 24 *Hen.* 8. It is Reſolved, Declared, and Recognized, *That by ſundry old Authentick Hiſtories and Chronicles, it is manifeſtly declared and expreſt, that this Realm of* England *is an Empire, and ſo has been reputed in the World.*

In

In the 25 *H.* 8. It is Declared, *That this Realm, recognizing no Superiour under God, but only the King, hath been, and is free from Subjection to any mans Laws*, but only to such as have been devised and obtained within this Realm for the Wealth of the same, or to such other as by sufferance of his Grace and his Progenitors, the People have taken at their free Liberty, by their own Consent to be used amongst them. 25 *H.* 8. *c.* 21.

In the Frst Year of Queen *Elizabeth* it is reported, *That the Crown of* England *is Imperial. After Statutes* it may be also apparanted from our Ancient Authors, in the Law. 1 *Eliz. c.* 1.

Omnis sub Rege, (says *Bracton*) *& ipse sub nullo, nisi tantum sub Deo. Parem autem non habet in Regno suo, quia sic amitteret Præceptum, cùm par in parem non habeat Imperium.* With *Bracton* concurs our *Fleta. Lib.* 1. *c.* 5. *Lib.* 1. *c.* 8. *num.* 5.

Le Roy ne devoit aver nul Peer en sa terre. *Mirror. c.* 1. *sect.* 2. *Co.* 4. *Instit.* 342. *Rot. claus.* 13. *Ed.* 2. *m.* 6.

Publick Notaries, made by the Emperour, claimed to exercise their Office here in *England*, but were prohibited, because it was against the Dignity of a Supreme King.

The King (saith *Cambden*) hath Sovereign Power, and Absolute Command among us, neither holdeth he his Empire in *Cambdens Britania. f.* 163. *in Engl.*

Vaſſallage, nor receiveth the Inveſtiture, or Enſtalling from another, nor yet acknowledgeth any Superior but God alone.

Sir John Davys *his Reports. Le caſe dell County Palat.* 61. *a.*

Upon a Difference ariſing betwixt King *William* the Second, and *Anſelme* Arch-Biſhop of *Canterbury*, touching the Juriſdiction and Authority of the Biſhop of *Rome*; the King alledged, *That none of his Biſhops ought to be ſubject to the Pope; but the Pope himſelf ought to be ſubject to the Emperour, and that the King of* England *had the ſame abſolute Liberty in his Dominions, as the Emperour had in his Empire.*

Davis Reports *le Caſe del County Palatine* 60. B.

The Doctors of the Imperial Law hold, *Quod ſolus princeps, qui eſt Monarcha & Imperator in Regno ſuo, ex plenitudine poteſtatis, poteſt creare Comitem Palatinum.*

The Kings of *England* have made Counties Palatine, as the Counties Palatine of *Lancaſter*, *Cheſter*, *Durham*, and *Pembroke*, and granted them Royal Rights and Privileges; and therefore the King of *England* is an abſolute Monarch within his Dominions and Territories.

Bracton. *Lib.* 3. *c.* 9. *de Actionibus. Co.* 3. *Inſt.* 57. *dr. & ſtu. lib.* 2. *c.* 51. *Co. Lit.* 65. *a. Co.* 2. *Inſt.* 273. *Lit. Sect.* 85, 87, 153, 159. *Co. lib.* 4. Beverlies Caſe Weſt. 1. *C.* 17. *Co. lib.* 9. 38. B.

To be ſhort, the King is ſtyled in our Books of Law, God's Vicar on Earth; God's Lieutenant, *Pater Patriæ*, *Supremus Dominus*, Lord Paramont, *noſtre Signior le Roy*, and the like.

By

By what has been ſaid, it appears clearly, That the Monarchy of *England* is an Abſolute, Free, and Independent Regality, Recognizing no Superiour here on Earth, but God Almighty.

It's alſo evident by our Books of Law, That the King of *England* is Abſolute and Supreme Lord of *Scotland*, *Wales* and *Ireland*. And,

1. *Of* Scotland.

THe Kings of *England* had ever appertaining to them the Superiour Dominion of *Scotland*, as ſhall be manifeſted by theſe Authorities following: The *Scots* performed the Oath of Fidelity and Homage to *Edred* King of *England*; and *Kennethus* King of *Scots* did Homage to our King *Edgar*; And *Conſtantine* the *Scottiſh* King yielded Homage and Allegiance to *Athelſtan* King of *England*.

Malcolme King of *Scots*, to *William* the Conquerour; and *Duncan* the Son of *Malcolme*, to *William Rufus*; and *David* of *Scotland* to *Matilda* the Empreſs, and Daughter of *H.* 1. And for this Cauſe the ſame *David* being required by King *Stephen* to do his Homage, refuſed; becauſe he had already done it to the aforeſaid Empreſs; but *Henry* (the Son of *David*) performed it to our King *Stephen*, and *Malcolme* King of *Scots*, to our *Henry* the Second, and *William* King of *Scots* to our King *John*, and *Alexander*

the *Scottiſh* King to *Henry* the Third, and to *Edward* the Firſt, Kings of *England*.

Alexander dying without Iſſue, *John Balliol* and *David Bruce*, contending for the Succeſſion, the Peers of *Scotland* referred the Controverſie to our King *Edward* the Firſt, as their Supreme Lord and Judge; and by virtue of this Supremacy and Superiority over that Nation, *Balliol* was conſtituted King of *Scotland*.

After the Defeat at *Hallidown-Hill*, *Balliol* King of *Scots* at *Newcaſtle* did Homage to *E.* 3. King of *England*, as his Superiour Lord, and takes his Oath of Fealty, binding himſelf and his Heirs to hold that Kingdom of him and his Succeſſors for ever.

H. 6. *Humfrey* Duke of *Glouceſter*, Protector to King *H. 6.* ranſomed and enlarged the King of *Scots* (who had been for many years Priſoner) taking Homage and Fealty of him from the Crown of *Scotland*; the Tenour whereof is thus Recorded, *I* James Steward *King of* Scots, *ſhall be True and Faithful unto our Lord* H. *by the Grace of God, King of* England *and* France, *the Noble and Superiour Lord of* Scotland, *and to you I make my Fidelity for the ſaid Kingdom, which I hold and claim of you; and I ſhall bear you Faith and Fidelity of Life and Limb and Worldly Honour againſt all men, and faithfully I ſhall acknowledge, and ſhall do you Service due for the Kingdom of* England *aforeſaid; So God me help.*

To

To Conclude with Justice *Fortescue*, who tells us, That *Scotland* was subject to *England* as a Dukedome, and was after advanced to a Politick and Royal Kingdom: And, *Cap.* 13. *Vide* Seldens Notes on this Chapter.

More may be found touching *England*'s Superiority over the Kingdom of *Scotland*, in these Authors following: Dr. *Duck*, *Lib.* 2. *c.* 10. *De Authoritate Juris Civilis* Romanorum. *Matthew Paris*, *Daniel's* History, and *Trussels* History of *H.* 6. *Camb. Eliz. Anno* 1560. Lord *Herberts H.* 8. *pag.* 481. 1 *H.* 7. 10. *a.*

2. *Of* Wales.

THe Kings of *England* were ever Supreme Lords of *Wales*, as appears by these Vouchers:

David Prince of *Wales* levied War against *Edw.* 1. This was Treason, for that he was within the Homage and Ligeance of the King of *England*, and Judgment given against him as a Traitor and not as an Enemy. *Co.* 3. *Inst. fol.* 11. *Co.* 2. *Inst.* on Stat. West. 1.

It was declared in the 27*th.* Year of *H.* 8. That the King's Most Royal Majesty of *meer Droit* and *very Right*, is very Head, King, and Lord, and Ruler of *Wales*. 27 *H.* 8. *c.* 26.

3. *Of* Ireland.

THat the King of *England* is Absolute and Supreme Lord of *Ireland*, is evidenced by Sir *Edward Coke*, who saith that King *Co.* 4. *Inst.* 359.

Edgar

Edgar Conquered the greateſt part of *Ireland* with the City of *Dublin*.

Again he ſaith, That though the King of *England* were(untill the Stat of 33. *Hen.* 8.) Styled by the Name of Lord of *Ireland*, yet was the King of *England Supremus & Abſolutus Dominus*, and had Royal Dominion and Authority, and that his Conſort was *in rei veritate Regina*; or elſe ſhe could not have had *Aurum Reginæ*. *Vide* more, *Co. lib.* 7. *Calvins Caſe*, *Davis Reports*, *le Caſe de Taniſtry*. 39. *a*.

But after all this the Reader may ſay, That he was long ago very well ſatisfied, concerning the King of *England's* Superiority over *Scotland*, *Wales*, and *Ireland*; but he would fain know what Title the King has to the Realm of *France*: And the rather, becauſe we give him the Title of King of *France* in all our Inſtruments, *&c.*

'Tis anſwered, That our King has a Juſt and a Legal Title to that Kingdom, upon the Account of *Edward* 3. King of *England*, whoſe Title to the Crown of *France* is agreed by all to be thus:

Philip the 4*th.* called *Philip le Bell*, Eldeſt Brother of *Charles de Valois*, married *Johan*, Queen of *Navar*, and by her had three Sons,

Lovis, Sir-named *Hutin* or *Mutineer*, *Philip* the *Long*, and *Charles* the *Faire*, and one Daughter named *Iſabella*, that was married to King *Edw.* 2. King of *England*, and ſurvived her

her three Brothers that died without Iſſue of their Bodies lawfully begotten.

Theſe Succeſſively, one after another, had enjoyed the Crown of *France*; but after the Death of the Third Brother, *Charles* upon a pretended Fundamental Law of that Kingdom (called *the Law Salique*) excluding Women from Sovereign inheritance) *Philip* of *Valois*, Son of *Charles* the younger Brother of *Philip le Bell*, endeavouring to put the *Salique Law* in Execution, laid hold of the Crown, againſt whom, in the Right of his Mother *Iſabella*, our King *Edw.* 3. oppoſing and quartering the Arms of *France*, which was *Semi de Luces*, proclaimed his Title to be King of *France* and *England*, and in hoſtile manner entered *France* with Banners diſplayed, where he performed (ſays our Hiſtorians) thoſe Noble Exploits, that whilſt any Records laſt, cannot be forgotten.

There he continued Victorious during the time of *Valois*, and left his Son the *Black Prince* to proſecute the Claim, who, to his Eternal Honour, took not only *John* the *French* King Priſoner, but braved *Charles* 5. to his Teeth unanſwered, that wiſe King thinking it no good Policy to meet a roaring Lyon in the Field. Since *Edw.* 3. Time, our King *Hen.* 5. advanced his Banner, and challenged the ſame Rightfull Sovereign Inheritance, and proved moſt Fortunately Victorious. H. 5.

Upon

H. 6. Upon the ſame Account *H. 6.* was Crowned at *Paris*, King of *France*, receiving the Oaths of Homage and Fealty, of all the Nobility of *France* preſent, and of all the Citizens and Inhabitants of that City and the Places adjacent.

Having preſented to the Reader a Survey of our Kings Title to the Crown of *France*, it will not be impertinent that the Validity of this pretended *Salique* Law be now inquiſited and examined.

The pretended *Salique* Law is this, *That the Crown ſhall deſcend to the next Heir Male, and exclude all Females.*

The unjuſt Surmiſe of this ſame Law, I ſhall endeavour to refell, both by Reaſon and Examples.

1. By reaſon, whereas in *Terram Salicam Mulieres ne ſuccedant* is the Text whereon the *French* build their Law; I ſay, that That Law was made in *Germany*, in Diſdain of the diſhoneſt Manners of the *German* Women, and had no relation to *France*: For that *Pharamond*, whom the *French* affirm to be the Author of this Conſtitution, Deceaſed above three hundred and fifty years before the *French* were placed beyond the River *Sala*; the one dying at Four Hundred twenty ſix, and the other being ſeated there *Anno* 805. Now let any man that underſtands any thing of a Poſitive Law, judge whether there be any Colour of Reaſon in this: *For a Law* (ſays one) *is the Direction of the Perſon that Governeth,*

verneth, to be obſerved by thoſe that are governed. How then can the *Gallicane* Crown devolve or deſcend according to the Cuſtom of the *Salians*, if the *French* Crown be not ſubject to the People of *Salia*; but where this Country of *Salia* ſhould be, no Geographer or Hiſtorian, Ancient or Modern can tell us.

2. As for Examples, we will cite amongſt others *Pepin*, *Hugh Capet*, and *Lewis 9.* who enjoyed the *French* Crown, not by virtue of the *Salique* Law, but as Heirs generally, or otherways.

Firſt for *Pepin*; he having put *Childerick* 1.
into a Monaſtery, had not any colour of Title, but as he was choſen by the Parliament of *Paris*: ſo that it ſeems the Parliament of *Paris* may do what the King and General Aſſembly cannot, and alter the moſt Fundamental Conſtitution of *France*, which at other times is immutable, not to be altered by the King, and States General.

Secondly for *Hugh Capet*, who to make 2.
his Title good againſt *Charles* of *Lorain*, the right *Maſculin* Heir to *Pepin*, did derive his Pedigree from one of the Daughters of *Charlemain*, Son of King *Pepin*.

Thirdly, for *Lewis 9.* He (a moſt Religious 3.
Prince) could not be reſolved in Conſcience to take upon him the Government, untill he was ſatisfied, that by his Grand-mothers ſide, he was deſcended from the Right Heirs of *Charles of Lorain*. To be ſhort; I admire with what confidence the *French* can urge this

this Law againſt others, and yet practiſe the contrary themſelves. As for inſtance, *Charles* the Eighth having married *Claude* the Dutcheſs of *Britain* (and by that Title poſſeſſed the Dutchy) by whom he had *Claude*, married to *Francis* the Firſt, who had Iſſue *H.* 2. that had Iſſue *Francis* 2. *Charles* 9 *H.* 3. and *Hercules*, and *Elizabeth* married to *Philip* 2. of *Spain*, and *Margaret* to *H.* 4. Now *Francis*, *Charles*, *Henry* and *Hercules*, dying all without Iſſue Legitimate; we *Engliſhmen* would fain know, how againſt the *Salique Law*, *Charls* and his Poſterity ſhould have a Title to *Britain*, and yet King *Phillip* and his Poſterity to be debarred of it, by virtue of this pretended *Salique Law*.

For a Concluſion to what I have ſaid, touching the validity of this pretended *French Salique Law*; I ſhall ſubjoin the Sentiments of Sir *Thomas Ridley*, in his View of the Civil and Eccleſiaſtical Law, *Part* 2. *c.* 1. *Sect.* 8. And he has been pleaſed thus to expreſs himſelf.

'Succeſſion in Kingdoms (ſays he) in moſt part of the World, in former time hath been, and at this day is, by Right of Blood (a few only excepted, which are Elective, as the 'Kingdom of *Poland* is at this day.) And in 'Succeſſion, the Eldeſt Son taketh place be-'fore the reſt; and if there be no Heir Male, 'then the Eldeſt Daughter ſucceedeth in the 'Kingdom, and her Iſſue; for Kingdoms (as 'alſo Succeſſion in other Dignities) are Im-

'partible.

'partible. And yet *France* (to exclude *Ed.* 3.
'from the Inheritance of the Crown thereof,
'who deſcended of *Iſabel* the Siſter of *Charles*
'the Fair, and ſo was next Heir Male to the
'Crown of *France*,) alledged for themſelves
'the Law *Salique*, pretending none, which
'claimed by the Woman, albeit he were the
'next Heir Male in Blood, was to ſucceed, as
'long as there were of the Male Line alive,
'how far ſoever they were off, in degree from
'the laſt King Deceaſed. But this is but a
'meer Device of the *French*, Fathered upon
'ſome rotten *Record* of that part of that Na-
'tion called *Salii*, of whom otherwiſe they
'have nothing memorable to ſpeak of, as be-
'ing the baſeſt Nation among them all, of
'whom they report their People to have
'been compounded; But this Device ſerved
'their turn then, whether it were Antiently
'Invented, or newly Coyned. But howſo-
'ever they oppoſe themſelves againſt a Wo-
'mans Government, as *Bodin* their Countrey-
'man hath of late ſtretched out the Strength
'of his Wit to deviſe Reaſons againſt the Go-
'vernment of that Sex: Certain it is, that
'the Law of God hath allowed it, as it ap-
'peareth in the Example of *Deborah*, who be-
'ing a Propheteſs, Governed *Iſrael* Forty
'years, and by her Direction got the *Iſraelites*
'a mighty Victory over *Siſera*, the Captain
'of the Hoſt of *Jabin*. And we among other
'Nations have found by experience *Gunaico-*
'*cracy*, or Womens Government, is nothing
'ſo

'ſo unfortunate as *Bodin* would make us to be-
'lieve it is. For both in our late Queen, and
'alſo in her Siſter (except only in the Caſe of
'Religion, wherein ſhe followed the Error of
'the Time, and was carried away more with
'Zeal than Knowledge, and thereby is more
'to be pitied, than to be envied) what is in
'their Government; the wiſeſt Man-Prince in
'the World would not deſire to be in his own
'Regiment: For what is in their Private
'Carriages (ſo you give no ear to Virulent
'and Malitious Tongues, who report Surmi-
'ſes for Subſtances, and Tales for Truths) or
'in their Publick Government (ſo you lay not
'other mens Faults to their Charges) that
'any man may juſtly blame. For that I may
'paſs over the reſt of their Heroical Vertues,
'fit for Women of their State (eſpecially the
'late Queen, who was Peerleſs among all
'Queens that ever went before her, and Un-
'matchable; as I verily do believe, by any
'that ever ſhall ſucceed her) as their Magna-
'nimity, whereby they ſubdued not only their
'Domeſtical Enemies, but vanquiſhed even
'their Foreign Focs, were their Deſignments
'never ſo dangerous; not ſhewing any To-
'ken of Diſcouragement, either in the Trea-
'ſonable Attempts of the one, or in the ma-
'litious Complotments of the other. What
'an excellent Work of hers was that, that
'then, when all her Neighbour Kingdoms
'round about her, drank with the Cup of
'Fornication of the Whore of *Babylon*, and

'ſo

'ſo continued conſtant to the End, maugre 'the Threats of the Red Fiery Dragon, and 'the Floods of Water he caſt out of his Mouth 'after her. How excellent ſhe did ſhew her 'ſelf in thoſe two Vertues, which do chiefly 'preſerve Princes States, that is Mercy and 'Judgment, the Records of her Time do ſhew; 'ſo that I may ſpare to remember any Name, 'which hapily would not be well ta-'ken.

Thus much for the Title that our Kings have to *Scotland*, *Wales*, *Ireland*, and *France*. To proceed now to my Second Deduction; That the Regality of this Realm will ſuffer no Diviſion.

2. *That the Sovereignty of* England *is Indiviſible.*

THE Dignity Royal of this Realm will not endure Diviſibility: As it will comport no Superiour, ſo it will admit no Competitor. The World may aſſoon be governed by two Suns, as this Kingdom by ſeveral Supreme Legiſlators: For Royal Dominion is a Plenitude *quæ non capit plures in ſolidum.*

The Royal Dignity of a King or Monarch (ſays *Coke*) from whence all other ſubordinate Dignities are deduced, *tanquam lumen de lumine*, are derived without any Diminution, will ſuffer no Diviſion, *Regia dignitas eſt indiviſibilis.* *Co. 4. Inſt. 243.*

Co. Lit. 165. *a.*

Again (ſays *Coke*) The Dignity of the Crown of *England*, is without all queſtion deſcendable to the Eldeſt Daughter alone, and to her Poſterity, and ſo it hath been declared by Act of Parliament: For *Regnum non eſt diviſibile.*

25 H. 8. 22.

Moreover, let the Reader review and conſider all Polititians, and they will grant, That *Suprema Poteſtas eſt in indiviſibili poſita*, Supremacy and Sovereignty is an indiviſible and undivided Entity. How can we ſhare it then amongſt more or many?

Beſides, That the Sovereignty of *England* is an Entity undiviſible, I will offer the Argument of one of our *Juriſts*, and 'tis by way of *Dilemma.*

Though Government doe differ (ſays he) in *ſpecie*, *viz. Monarchy*, *Ariſtocracy*, and *Democracy*, yet in all of them this Power or Command is the ſame and equal, *viz. Supreme*; And this Power or Command muſt be in one thing, *viz.* in one *Man*, in one *Court*, in one *People*: But if it be divided into two or more, it is either *ſupervacaneous* or *deſtructive*: for thoſe two or more in whom this divided empire does conſiſt, muſt either agree or diſagree in the ſame thing; if they agree to will or nill the ſame, then it is ſupervacaneous: For it had been all one, if but one part had willed it, and *Fruſtra fit per plura, &c.* But if they diſagree in willing or nilling the ſame thing, it is deſtructive: For it is impoſſible for the Subject to obey, becauſe the Law it ſelf is a Contradiction, and if the Subject obeys one, he diſobeys the other,

and

and to obey neither, brings *Anarchy* and Confuſion upon all the Governed: What is left then but the Subject to be divided, as well as the Power. And a *Kingdom divided in it ſelf cannot ſtand*; neither are the Governours in whom this divided Power or Command does conſiſt, in any better Caſe than the Subject: For,

Nulla fides Regni Sociis, omnisque poteſtas
Impatiens Conſortis erit. ------ *Lucan.*

This ſame Argument the *Papalini* would fain evade with a diſtinction of theirs; they tell us, that Cauſes are two fold, Spiritual and Temporal; though neither the Sovereignty in *Temporalibus*, nor the Supremacy in *Spiritualibus* is impartible, not to be divided into two or more, yet the Sovereignty may be veſted in one Perſon, as in the King; and the Supremacy in another, as in the Pope: So that the King ſhall be Sovereign in matters ſecular, and the Pope, Supreme Head in Cauſes Spiritual and Eccleſiaſtical.

This is a diſtinction (ſay we) without a diverſity; For the King of *England* as King, is Supreme Governour as well in Cauſes Spiritual, as in matters Civil; The Sovereignty of *England* being a Replete Compacted Body, and Impartible. If the Church interfere, and claſh with the State, and ſtruggle for a Joynt Partnerſhip, how can the Scepter continue its Prerogative, or the People their Privileges? In a word, The Spiritual and Temporal

poral Grandiſhip are (and ought always to be) wreathed in the Imperial Crown, without either it will not be worth wearing.

If what I have ſaid, be not ſufficient towards the Confuſion of this Popiſh Diſtinction, Let the Reader read the Caſe of *Præmunire* in Sr. *John Davis* his *Iriſh Reports*, and I am confident, he will judge it a meer Vanity, a *Chimera*, or Fantaſtical Nothing, fit to be ſent to Purgatory for a Token.

As for our *Miſo-monarchical* Sectaries, they endeavour to extricate themſelves out of this *Dilemma*, by intoxicating the Vulgar, with a New State-deviſed Principle, *viz.* That in Monarchy, *the Legiſlative Power is Communicable to the Subject, and is not Radically in Sovereignty in one but in more*; ſo that they fancy a *Mixture* or *Coordination* in the very *Supremacy* it ſelf; That the *Monarchy*, or higheſt Power it ſelf is compounded of three *Coordinate* Eſtates; And this ſome call a *Mixt Monarchy*. The Vanity of which Government will be evidenced by theſe following Arguments:

The Firſt is this, *Monarchy* compounded of three *Coordinate* Eſtates, in plain Engliſh ſpeaks this *Non-ſenſe* The Power which one only hath is in three jointly and equally.

The Second ſhall be this: If there be a *Coordination* in the *Supremacy*; That is, If our King, the Lords and Commons, are jointly the Supreme Governour, the *Correlatum* is wanting, none are left over whom they ſhould

reign, we ſhould have a Kingdom without a Subject, becauſe all may challenge a ſhare in the Sovereignty.

The Third and laſt Argument may be this; All agree that there are three ſorts of Government, *Monarchy*, *Ariſtocracy*, and *Democracy*; now if they may be mixed, then ſure they may be more than Three, *viz.* *Monarchy*, *Ariſtocracy*, and *Democracy*; *Monarchy* mixed with *Ariſtocracy*; *Monarchy* mixed with *Democracy*, and *Monarchy* mixed both with *Ariſtocracy* and *Democracy*: *Ariſtocracy* mixed with *Monarchy*, *Ariſtocracy* mixed with *Democracy*, and *Ariſtocracy* mixed with both. And ſo *Democracy* mixed with *Monarchy*, *Ariſtocracy* and both; ſo that either theſe three ſorts of Government will admit of no Mixture, or elſe there may be above three ſorts of Regiment; And what muſt this Government be called? Could any Perſon give a Name to it, it muſt be either *Ariſtomonarchy* or *Demomonarchy*: In plain-Engliſh, the Chief Men-Government of one Man alone, or the People-Government of One alone.

Having given the Reader my Arguments to diſcover the Untruth and Weakneſs of this Puritanical *Antimonarchical* Principle, whereon this Mixture or Coordination in the very Supremacy of Power it ſelf is grounded, I will demonſtrate unto him the true meaning of that, which our New Statiſts call a *Mixt Monarchy*.

Mr. Dudley Diggs. If we ſpeak properly (ſays an Ingenious and Learned Author) there cannot be ſuch a thing as *Mixtum Imperium*, a mixt Monarchy, or a mixt Ariſtocracy, or mixt Democracy; becauſe, if there are divers Supreme Powers, it is no longer one State. If the Supreme Power be but one; that is that Authority unto which *Le dernier reſort de la Juſtice*, the laſt Appeal muſt be made, and againſt whoſe Sentence though unjuſt, we have not any Legal Remedy. This muſt be placed either in one Man, who is the Fountain of all Juriſdiction, and then it is a *Monarchical* Government, or in ſome Nobles, and then the Regiment is *Ariſtocratical*, and the Sentence of the Major Part of them becomes Law to all Effects, whether concerning our Goods or Lives: Or if the Civil Conſtitutions of a State direct us to appeal to the People, this is an abſolute and true *Democracy*. By a mixt Monarchy therefore (not to quarrel about words) nothing but this can reaſonably be underſtood, That it is not Παμβασιλεία, or Παντελὴς μοναρχία, wherein the Will of the Prince publickly made known, gives the Law, *Quodcunque Principi placet, Legis habet Vigorem*; but Βασιλεία κατὰ νόμον, a Government not Arbitrary, but reſtrained by poſitive Conſtitutions, wherein a Prince hath limited himſelf by promiſe or Oath, not to exerciſe full Power. This Grant is of Force, becauſe any man may either totally reſign, or diminiſh his Rights by Covenant. Hence it is, That in Monarchies all Kings

Kings have Supreme Power, though they have not all the same *Jura Regalia*; their Prerogatives are Larger or Narrower, according to their particular Grants. For Example, our Kings have reteined to themselves the Rights of Coyning Money, making Great Officers, bestowing Honours, as Dukedoms, Baronies, Knighthoods, *&c.* pardoning all Offences against the Crown, making War and Peace, sending Ambassadors to negotiate with Foreign States, *&c.* and they have restrained themselves from the Use of that Power which makes new Laws, and repeals old, without the Consent of the Lords and Commons in Parliament, as likewise from raising Money upon the Subject without their Consent.

More may be seen for the further Discovery of this Cheat; I mean our New Statists Mixture of Government in Mr. *Roger Coke*'s Observations on Mr. *Whites Grounds pag.* 20, 21. Dr. *Ferne* in his *Tract* Intituled *Conscience satisfied. sect.* 4. In Sr. *Robert Filmer*'s two pieces lately Published, and in a Treatise Intituled *Sacro-Sancta Regum Majestas. cap.* 8. *pag.* 95. *cap.* 9. *pag.* 103 *cap.* 10. *pag.* 105. This last piece was Printed in the year 1644, and Dedicated to the Mirrour of Loyalty the (now Duke, then) Marquess of *Ormond.*

3. *That the Regality of this Realm is Incommunicable.*

UNum *Imperium* (says *Tacitus*) *unius animo regendum est*; Councel may be in many, as the Senses, but the Supreme Power can be but in one, as the Head; And therefore neither it, nor any of its Essential Attributes can be totally communicated to any Subject. As for Example;

1 *H.* 4. 5. *b.* The King cannot grant Power to any Subject to pardon a Felon; because 'tis a *Prerogative* which is not grantable.

2 *H.* 7. 13. *a.* So a Corporation is a thing which ought to be Instituted by the King himself, and by his own Words, and therefore he cannot give License to another to make a Corporation.

So the King cannot grant to any other person, to make of *Aliens* born, *Denizens*; because it is by the Law, so inseparably and individually annexed to his Royal Person, it being a high Point of Royal Prerogative.

Co. lib. 7. Calvin's Case.

Lib. 2. *c.* 24. *num.* 1. *Bracton* tells us, That *the Rights of the Crown cannot be granted away. Those things which belong to Jurisdiction and Peace, and those things which are annexed to Justice, appertain to none but to the Crown and Dignity of the King; nor can be separated from the Crown; nor be possessed by any Private Person.*

20 *H.* 7. *f.* 7. *a.* 8. *a.* The King cannot grant to me, to make my Justices of Peace, no more than he can grant

grant to me the pardoning of Felons: For he is the *Chief Juſtice*, and 'tis annext to his Perſon, from which it cannot be ſevered.

But after all this, it may be objected, That the chief Governour of Counties Palatine had *Jura Regalia*, as fully as the King had in his Palace (for they could pardon Treaſons, Murders, Felonies, and Outlawries thereupon. They could make Juſtices of Eyre, Juſtices of Aſſize, of Gaol-Deliveries, and of the Peace, *&c.*) And therefore Sovereign Power, and the Eſſences thereof are Communicable to Subjects. *Co. 4. Inſt. 205.*

To this Objection, this Anſwer may be returned, That the Power and Authority of thoſe that had Counties Palatine, was *de facto*, King-like; but this Kingly Power was afterwards reſumed from them, and united again to the Crown, by the Statute of 27 *H.* 8. if not for the Illegality of the Communicativeneſs, yet for the Inconveniencies that did ariſe from that Communication; and yet whilſt theſe Earls Palatine had Royal Authority in all things, there was an acknowledgment of the King to be their Superiour Lord and Sovereign. And ſo ſays *Bracton*, *Comites Palatini Regalem habent Poteſtatem in omnibus, ſalvo Domino Regi ſicut Principi.* *27 H. 8. c. 24.* *Lib. 3. c. 8. de Corona.*

The ſum of all is this; His Majeſties Prerogatives are as the Lawyers ſpeak, *in indiviſibili poſita quæ diſtrahi non poſſunt, minui non poſſunt*, are ſo indiviſible in themſelves, and naturally and intrinſecally inherent in the Crown in his Sove-

Sovereignty and Supremacy, that they cannot be made away; or so Communicated to the Subject, *ut defluat Radix Supremæ potestatis*, to devest himself of them, *ad minuendam Majestatem* to lessen Sovereign Majesty, although by Trust and delegate Power, the Execution may be intrusted to others. *ad minuendam solicitudinem*, to ease him of unsupportable Burthen. These Essential Attributes of Sovereign Power are fitly resembled by the Royal Crown, from which if you take away the left part, you spoil it so in its Nature and Shape, that it is no more a Crown, as King *James* (our *English Solomon*) and others have well expressed.

4. *That the Royalty of* England *is Unalienable.*

BY the Laws of this Realm, it is not in the Power of the King to collate his Crown by any Dispositive or Testamentary Will, or by any other Act, the Right Descending to the next of Blood, only by the Custom and Law of the Kingdom; And therefore it hath been declared by the Lords and Commons in Parliament, *That no King can put himself, nor his Realm, nor his People in Subjection to any other Potentate, without the Assent of the Lords and Commons in Parliament; wherefore if King* John *had surrendred his Kingdoms of* England *and* Ireland, *to the Pope, by the Common Council of the Barons, as his Char-*

Co. 4. Inst. 14.

Charter purported, yet it bound not; for it was not done in Parliament by the King, Lords, and Commons. And albeit it might (as it appeareth, it cannot be done without Authority of Parliament) yet this is contra Legem & Conſuetudinem Parliamenti *to do ſuch a thing.* Roys auſi (*ſays our Ancient* Britton) ne purront rien aliener en droit de lour Corone, ne lour Royaltie, que il ne ſoit repealeable, pur lour ſucceſſors. *Cap. 34. de Donus.*

More of this ſame Learning may be ſeen in *Grot. lib. 2. c. 7. nu. 25. de jure Belli & Pacis. 1 H. 7. 10. a. Co. lib. 12. f. 28. Cowels Inſt. 2. 8. Swinburn's Tract of Wills. Dr. Ducke lib. 2. c. 9. nu. 5. de Authoritate Juris Civilis. Dr. Zouch pars 1. ſect. 3. nu. 2. de Jure inter Gentes. pars 2. ſect. 7. de Juditio inter Gentes.*

But the Reader may demand of me, Whethere are not Examples to be produced, that prove Kingdoms to have been transferred from one Prince to another by a Voluntary Gift.

I anſwer, That there are Examples to be found in Hiſtory, and I think I can inſtance in two great Examples; the one of *Alphonzo*, King of *Arragon* and *Sicily*, who having conquered the Kingdom of *Naples* from *Renee*, Duke of *Anjou*, gave it to his Natural Son, by his laſt Will and Teſtament.

The other Example is of *Alphonzo el Bravo*, King of *Caſtile* and *Leon*, who having Conquered *Portugal* from the *Moors*, gave it in Marriage with his Illegitimate Daughter to *Conte*,

Conte, Henry of Lorayne, ſo that the Reader has two Examples, the one by Teſtament and the other *per donationem inter vivos*.

But herein, a Diſtinction is to be made, that he who conquered, may in Perſon diſpoſe a Kingdom away, in which Caſe both our Examples fall; but I ſay, and poſitively affirm, That no King in a Monarchy, that is by the ancient Cuſtom, and Fundamental Laws of the Realm, merely ſucceſſive, either to the Heirs Male, or Heirs General, can any ways diſpoſe of his Kingdom in Prejudice to the next Heir in Blood, according to the Cuſtom, (I mean Male or General) no not though the Parties intereſſed in the Succeſſion ſhould commit Treaſon, or ſhould be excluded, by Act of the States or Parliament.

That Treaſon cannot avoid a lawful Succeſſion in Blood, we have Example in *Lewis* the 12*th*, who was in Arms againſt *Charles* the 8*th*. the then *French* King; and our King *H.* 7. ſtood attainted of high Treaſon, at the time of his coming into *England*, and yet no Reverſal of the Attainder was made; for all the Judges of *England* (after Communication had amongſt themſelves) did agree, that the King was a Perſon able, and diſcharged of any former Attainder *ipſo facto*, That he took upon him to reign, and to be King; and the Reaſon hereof is; Becauſe the Imperial Crown once worn, quite taketh away all Defects. 1 *H.* 7. 4. *b. Plowd. Comment.* 238. *Co. Litt. f.* 16. *b.* Lord *Bacons H.* 7. *Anno prime*, & *Cambd.*

Cambd. Eliz. Anno 1559. By which it manifeſtly (by the way) appeareth, That by the Laws of *England*, there can be no *Inter-regnum* within the ſame, and that preſently by Diſcent, the next Heir in Blood is compleatly and abſolutely King, without any eſſential Ceremony, or Act to be done *ex poſt facto*, and that Coronation is but a Royal Ornament, and outward Solemnization of the Diſcent; a Ceremony to ſhew the King unto the People. That is to ſay, Coronation is only a Ceremony, and ſuch a Ceremony as doth not any thing, only declareth what is done: The King was King before it, as much as he is after it; only by it he is declared to be what he was before, and what he ſhould have been ſtill, though he had not been ſo declared. I pray you what Solemnity was uſed at the Coronation of King *James* in *Scotland*? For he was crowned in the Cradle, and by a People, who had profanely baniſhed all manner of Ceremonies, *Sed è diverticulo in viam.*

Co. lib. 7. Calvin's Caſe Hil. 1. Jac. Regis in the caſe of *Watſon* and *Clark* Popiſh Prieſts. *Co. 3. Juſt. f. 7.*

But whether an Act of Parliament may exclude the Succeſſion in Blood, is the greateſt Queſtion. And we for our parts have Statutes that make it Treaſon to deny it, but never otherwiſe made than only for fear or Flattery of the preſent Prince, and never obſerved; In the Civil Wars between the two Houſes of *York* and *Lancaſter*, how many Statutes have been made to the Diſinheriſon of the Title of *York*, and all vaniſhed in Smoak?

The

The Statute of 25 *H.* 8. c. 22. in Diſherison of Queen *Mary*, and confirmed by another Statute of 26 *H.* 8. c. 22. how were they I pray obſerved? and laſtly, the great Act of 35 *H.* 8. *c.* 1. which gave Authority to the King that after his own Line, he might diſpoſe under his great Seal, or by Will, of the Kingdom: have we not ſeen it, to the great and unſpeakable Joy of us all, moſt happily neglected ſo far, as that the Caſe, which in that Statute is put, of the Extinguiſhment of *H.* 8. his Line, and a Will made, ſuch as it was, to the Diſinheriſon of the *Scottiſh* Line, the Validity thereof was never ſo much as once conſidered upon by our Council and Lords, as being a Matter, that whether the Will were a Will or not, ſkilled not at all; the Act it ſelf being a void Act that ſhould give Strength to the Will.

To what I have ſaid touching Succeſſion in Hereditary Monarchies, I ſhall preſume to add the Opinion of two moſt learned and ingenious Authors; namely, Mr. *Roger Coke*, and the late Earl of *Clarendon*.

Lib. 3. *c.* 2. *pars* 1. of Succeſſion.

'The former has theſe very words, No humane Law can create a humane Right, *Jura ſanguinis nullo Jure Civili divini poſſint*; Nor 'is this Right of Succeſſion from Divine poſitive Laws, but obſerved as well where Gods 'Revelation of himſelf is not received, as 'where it is; and if according to the Reſolution of all the moſt Learned and Reverend 'Judges in *Calvin*'s Caſe, Subjection is from 'no humane Law, but from the Law of Nature,

'ture, then of Neceſſity muſt Regal Right,
'and Inheritance be from the Law of Nature;
'for no man ſuppoſeth Subjection where he
'does not preſuppoſe Power. The Will there-
'fore of *Hen.* 8. where for want of Iſſue of *Ed-*
'*ward*, *Mary*, and *Eliz.* he gives the Engliſh
'Monarchy to the Iſſue of *Frances*, and *Elia-*
'*nor*, Daughters of *Mary*, his younger Siſter,
'before the right Heirs of *Margaret*, his eldeſt
'Siſter, Wife of *James* the Fourth of *Scotland*,
'was void, and not to be allowed; and ſo was
'that of *Edward* 6. who did diſinherit his Si-
'ſters, *Mary* and *Elizabeth*, and gave the
'Crown to *Jane*, Daughter of *Frances* the
'*French* Queen aforeſaid, by *Charles Brandon*,
'Duke of *Suffolk*, and ſo were the Acts of
'Parliament made by *H.* 4. *H.* 5. *&* *H.* 6.
'which intail'd the Crown upon their Heirs,
'ſo were the Acts of the laſt of *H.* 6. which
'intailed the Crown upon him and his
'Heirs Males of his Body; and ſo were the Acts
'of the 1 of *R.* 3. *&* *H.* 7. which intailed the
'Crown upon them, and their Heirs. Neither is
'Succeſſion and Inheritance of Crowns declared
'by any humane Law in the World, that I know
'of, but only the pretended *French Salique* Law.

The ſame Author ſays further *parag.* 2. None but God can make an Heir to a Crown, *Solus Deus Hæredem facere poteſt, non homo. Co. Lit. ſect.* 1. And this Heir which Sir *Ed. Coke* here ſpeaks of, is but an Heir in Fee to Lands or Tenements, according to Common Law or Cuſtome: If then only God can make

ſuch

ſuch an Heir, then ſure none but God can make an Heir, which makes Humane Laws, and permits Cuſtoms.

The latter in his Survey of the dangerous Errours of Church and State in Mr. *Hobbs*'s Book, Intituled *Leviathan. pag.* 61. expreſſeth himſelf thus:

'Methinks his own Natural Fear of Danger, which made him fly out of *France*, 'aſſoon as his *Leviathan* was publiſhed, and 'brought into that Kingdom, ſhould have terrified him from invading the Right of all 'Hereditary Monarchies in the World, by declaring, that by the Law of Nature which is 'Immutable, it is in the Power of the preſent 'Sovereign to diſpoſe of the Succeſſion, and to 'appoint who ſhall ſucceed him in the Government; and that the word *(Heir)* doth 'not of it ſelf imply the Children, or neareſt 'Kindred of a Man; but whomſoever a man 'ſhall any way declare he would have ſucceed 'him, contrary to the known Right, and Eſtabliſhment throughout the World, and which 'would ſhake, if not diſſolve, the Peace of all 'Kingdoms.

Thus much may ſuffice (and I hope ſufficiently) to prove, that the Deſcent of the Crown cannot *(de Jure)* be impeach'd in the Right Line.

Having thus ſufficiently proved out of our Books, That the Power of the Kings of *England* is an Exempt, Abſolute, Supreme, and Independent Authority, acknowledging no Superi-

Superiour, but God Almighty, not to be Divided, Communicated nor transferred to any person whatsoever. I proceed to shew the Reader in the next place, That *Charles* the Second, our now Gracious Sovereign Lord and King, is the lawful and undoubted Heir of the Blood Royal of this Realm, as appears by the Pedigree following; and consequently his Most Excellent Majesty has the same Absolute, Sovereign and Regal Power over the Subjects of this Nation, that his Royal Predecessors the Kings and Queens of *England* have heretofore claimed and enjoyed.

The Royal Pedigree of England *(given by Sir* Thomas Smith*) is thus:*

HEn. 7. By the Fathers Side was the Son of *Edmond* Earl of *Richmond*, the Grand-child of *Owen*, the Son of *Meredith Tydor*, and *Katharine* the Widdow of *H.* 5. King of *England*, and Daughter of *Charles* the Sixth King of *France*. Fathers Side.

2. By the Mother-side, he was the Son of *Margaret*, Grand-son of *John Ghent* Duke of *Lancaster*, Great Grand-son of *Ed.* 3. King of *England*. Mothers Side.

Elizabeth.

Fathers Side. 1 By the Fathers side, was the Daughter of *Edward* the Fourth King of *England*; Grand-Daughter of *Richard*, Duke of *York*; great Grand-Daughter of *Richard* of *Cambridge*; Great, Great Grand-Daughter of *Edmund* Duke of *York*; the fifth Son of *Edward* the Third, King of *England*.

Mothers Side. 2. By the Mothers side, she was the Daughter of *Eliz.* Grand-Daughter of *Richard* of *Woodvill* Earl of *Rivers*, and *Jacoba* Dutchess of *Bedford*.

By this *H.* 7 and his Wife *Elizabeth*, were begotten,

1. *Arthur*, who dyed without Issue.
2. *Henry*, who reigned after his Father.
3. *Edmund*, who dyed in his Infancy.
4. *Margaret*, who was marryed to *James* 4. King of *Scots*, that begat on her,

James 5. King of *Scots*.
Arthur,
Alexander,
and one Daughter.

This *Margarets* second Husband was *Archibold Douglas*, Earl of *Argile*, and she had by him, *Margaret* that was marryed to *Matthew* Duke of *Lenox*.

By this latter *Margaret* and *Matthew*, were born *Henry*, that died in his Infancy; and *Henry Darley*, who married *Mary* Queen of *Scots*;

Scots; and by her begot *James* 6. of *Scotland*, and first of *England*, King; and *Charles* Earl of Lenox, the Father of *Arabella*.

5. *Elizabeth*, that dyed a Child.

6. *Mary*, first the Wife of *Lewis* the thirteenth King of *France*, by whom she had no Issue, and then she was the Wife of *Charles Brandon* Duke of *Suffolk*; who had by her, *Henry*, *Charles*, and *Frances*. This *Frances* was married to *Henry Grey*, Marquess of *Dorset*, after, and betwixt them was begat, *Jane*, Regina infelix.

7 *Katharine*, that dyed a Child.

Henry the Eighth, married first *Katharine*, the Relict of his Brother *Arthur*, and on her begat *Henry* that died young, *Mary*, that afterwards reigned; *Henry* the Eighth being divorced from this *Katharine*, married *Ann* of *Bolen*, upon whom *Henry* the Eighth begat *Elizabeth*, that afterwards reigned. This second Wife being beheaded, *Henry* the Eighth married *Jane Seymer*, on whom he begat *Edward* the Sixth, who immediately after his Father reigned, and died without Issue.

Mary was married to *Philip* King of *Spain*, and died without Issue.

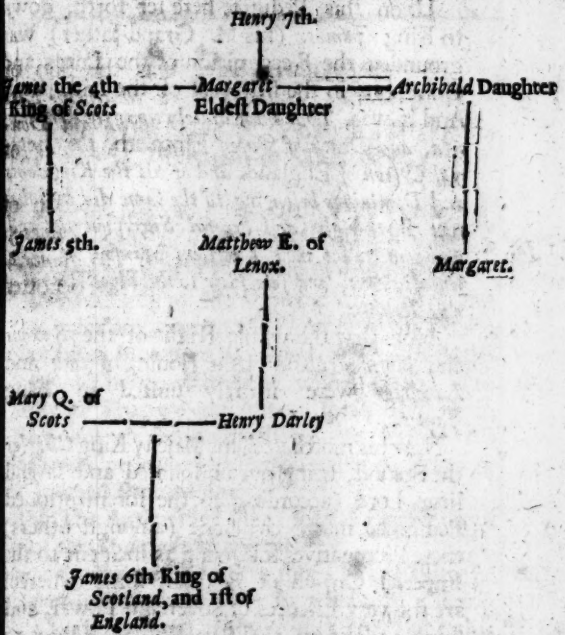
Elizabeth reigned, and was never married.

James 1. of *England*,

By the Fathers Side, was the Son of *Henry Darley*, Grand-Son of *Matthew* Earl of *Lenox*, great Grand-Son of *Archibald Douglas*, and *Margaret* the eldest Daughter of *H.* 7.

By the Mothers Side, he was the Son of *Mary*, Queen of *Scots*, Grand-Son of *James* 5. King of *Scotland*, great Grand-Son of *James* 4. King of *Scots*, and *Margaret* the first begotten Daughter of *Henry* 7.

Hen. 7th



James King of *Great Britain*, married *Ann* the Daughter of *Frederick* the Second King of *Denmark* and *Norway*, on whom King *James* begat

1. *Henry*, who dyed in the flower of his Age, and without Iſſue.
2. *Charles* the Firſt (the Royal Martyr) who took to Wife the Princeſs *Henrietta Maria*, a Daughter of *France*, and on her begat *Charles* the Second (our now moſt Gracious Sovereign) The moſt Illuſtrious Prince, his Royal Highneſs, *James* Duke of *York*, &c.

Upon this Pedigree here set forth, dow
to King *James*, (his M. Grand-father) wa
grounded the Recognition of the Lords an
Commons in the first year of the said King
And it was, *That immediately upon the Dissolu
tion, and Death of Queen* Elizabeth, *the Impe
rial Crown of* England, *and of all the Kingdom
and Dominions belonging to the same did by inhe
rent Birth-right and lawful Succession descend*
1 *Jac. 6.* *and come to his most Excellent Majesty, as bein
lineally next, and sole Heir to the Blood-Royal o
this Realm.*

Note that the whole Right of the *Saxon*
and *Normans*, and of the Houses of *York* an
Lancaster were intirely united in King
James.

Now his most Excellent Majesty, King *Charles*
the Second, being our undoubted and lawfu
liege Lord (according to the forementioned
Pedigree) may challenge (amongst others)
these Prerogatives following as incident to th
Imperial Crown of *England*, some whereo
are the very Essences of Sovereign Power, and
some annext to the Regality according to
the municipal Laws of the Land.

1. Preroga

1. Prerogative.

His Majesty as to the Coercive part of the Law, is Subject to none under God.

GOd intending the Good of Mankind, which is not to be obtained without Preservation of Order; hath commanded us to be subject to the Supreme Authority; not to offer any manner of Violence to the Person of him, in whom is vested Sovereign Majesty. The Sanctitude of which Person is so great, That we are not to speak Evil of it, no not to think, much less to hazard the Power, or injure the Person either by Force or Judicial Proceedings. *Liber ab omni legum Coactione.*

The Authorities that I intend for the proof of this Prerogative are these:

Bracton and *Fleta* say thus: If any thing be demanded of the King by a Subject, (seeing a Writ lieth not against him) he is put to his Petition, praying to correct and amend his own Fact; which if he will not, it is a sufficient Penalty for him, that he is to expect a punishment from the Lord. No man may presume to dispute of what he does, much less to resist him. Bract. *lib.* 1. *c.* 8. *lib.* 5. *c.* 3. *de defaltis.* *Fleta lib.* 2. *c.* 17.

Sir *John Markham* Chief Justice, told King *Ed.* 4. That the King cannot Arrest any man for Suspicion of Treason or Felony, as other 1 H. 7. 4. *b.*

of his Lieges may: for that if it be a Wrong to the party grieved, he has no Remedy.

3 *Ed.* 3. 19. *Co.* 4. *Inſt.* 17. *Co. lib.* 1. 44. *b.* *Plowd. Com.* 24. *Co Lit.* 19. *b.*

The King has no Peer in his Land, and therefore cannot be Judged.

Our Law ſays, That the King can do no Wrong, and therefore cannot be puniſht; and the Reaſon why it is ſaid in our Law, That the King cannot do a Tort, is, becauſe nothing can be done in this Realm by any Act of the King, as to the Subjects Lands or Liberties, but muſt be approved by the Eſtabliſh'd Laws of this Realm, which the Judges are ſworn to obſerve and deliver, between the King and his Subjects; and therefore the Judges and Miniſters of Juſtice, are to be queſtioned and puniſhed if the Laws be violated, and no Reflection to be made on the King. *Si factum injuſtum fuerit* (ſays *Bracton*) *perinde non erit factum Regis.*

Co. lib. 7. Calvin's Caſe.

The *Spencers* in *Ed.* 2. Time, hatcht to cover their Treaſon, this moſt horrid opinion, *viz.*

That Homage and the Oath of Allegiance was more by reaſon of the Kings Crown (that is of his Politick Capacity) than by reaſon of the Perſon of the King, upon which Opinion, they inferred theſe Curſed Principles:

1. If the King demeaned himſelf not according to Reaſon in the Right of the Crown, his Lieges are bound by Oath to remove him.

2. Seeing the King could not be removed by Suit of Law, it was to be done by Force.

3. That

3. That the Subjects be obliged to govern in default of him.

All which most abominable Tenents were condemned by two Parliaments, one in the Reign of *Ed.* 2. called *Exilium Hugonis le Spencer*, and the other in the Reign of *Ed.* 3. And the Separation of the King's Person from his Power, is the principal Article Condemned.

To Conclude, it was declared by the Lords and Commons in Parliament, *That by the undoubted and Fundamental Laws of the Kingdom, neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the People Collectively, nor representatively, nor any other Persons whatsoever, ever had, hath, or ought to have any Coercive Power over the Persons of the Kings of* England.

12. *Carol.* 2. *Regis c.* 30. The Attainder of several persons guilty of the horrid Murder of of King *Charles* I.

With our Laws do concur the Laws Imperial, *Sacrilegii instar est rescripto principis obviare: Unde ipse Legibus Civilibus non Astringitur. Nam in omnibus Imperatoris excipitur fortuna cui ipsas Leges Deus subjecit.*

Zoucheus *pars* 4. *sect.* 4. *de jure Principis.*

Princeps Legibus solutus est, says *Justinian*; That is to say, the Power of all Monarchs, is, *Legibus soluta*, subject to no over-ruling Power of Man. Conceive it not so, that Kings are free from the Direction of, and Obligation to the Law of God, Nature, and Common Equity; but from the Coercion Humane, or any Humane Coactive Power, to punish, censure or dethrone them.

More

More of this excellent Learning the Reader may see in Doctor *Duck lib. 1. c. 3. num. 1 & 2. de Authoritate Juris Civilis.* Sir *Walter Raleigh Hist. part 1. Lib. 2. c. 4. sect. 16.* Mr. *Roger Coke Lib. 2 c. 3. num. 5, 6.*

2. Prerogative.

Power of Making Laws.

Legum fundarum summa potestas.

THE King in a double Respect is the Life of our Laws, once the Life of our Peace, without which our Laws are put to silence; and again, because Laws are *Litera mortua* without the Stamp of his Royal Authority: And therefore the agreeing Votes of the Two Houses of Parliament are not Conclusive to his Majesties Judgment, nor can they carry with them his Royal Assent, whom they do not represent in any kind; nor is the King any further obliged to concur with the Votes of the Lords and Commons, than he sees them Conformable to the Laws of God and Nature, agreeable with his Sacred Rights and Prerogatives as a Sovereign, and tending to the General Good and Welfare of his Loving Subjects:

In Proof of this, these Authorities may be offered.

Though

Though an Act hath passed both Houses of the Lords and Commons in Parliament, yet before it be a Law, the Royal Assent must be asked or demanded, and obtained. *Co. Litt.* 90. *b.*

It is no Statute if the Kings Royal Sanction be not to it, and he may dissassent; for the King in Parliament hath a Negative Voice, and therefore in a Clause made 2 *H.* 5. both Houses of Parliament do acknowledge that it is of the Kings Regality, to grant or deny such of their Petitions as pleaseth himself.

It is declared, that no Legislative Power in either or both Houses of Parliament without the King. 13 *Car.* 2. *Regis c.* 1.

But upon what hath been said, it may be by some objected, That seeing his Majesty cannot enact Laws without the Lords and Commons, (for every Statute, as appears in our Books must be made by the King, with the Assent of the Lords and Commons) the Legislative Power is not solely in the King, but in him and the two Houses of Parliament; so that they fancy the two Houses Partners of the Sovereignty, and turn the Monarchy of *England*, into a tripartite and coordinate Government, which others call a mixt Monarchy. 4 *H.* 7. 18. *b.* *Co. Litt.* 159. 6. *Co.* 4. *Inst.* 25.

I answer that to the two Houses of Parliament, belongs a Right of Privilege, for the making of Laws by yielding their Consent; but that they have a coordinate, coequal, corrival and collateral Power with the Sovereignty of Royalty, all able Jurists, and true Politicians utterly deny; for the Houses are call-

called together by the Royal Authority, not to be *Dictators* but *Councellors*; not to be *Partners* in the *Legislature*, but *Petitioners*; as appears by the very Form of passing Bills at this very day observed, *Le Roy le veult & fait Come ill est desire*, which Form of Words shew, That the Rogation of Laws, belongeth to the two Houses, but the *Legislation* to the King; That their Act is *Preparative*, his only *Jussive*; or if you will, though the King doth not *Absolutè solus*, yet *Principaliter solus*, he maketh Laws concerning Matters Ecclesiastical, Capital, Civil, Martial, Maritime, and the like.

But yet further; If the two Houses of Parliament do retain their Proportion in the Legislation, that is to say, if they have a coordinate or concurring Power, with the King in enacting Laws; then they must have it, either *Originally* in themselves, or from elsewhere, *by way of Derivation*.

First, They cannot have this Coordination of Power, *Originally* and *Radically* vested in themselves; for (as to the Lords) Mr. *Bracton* tells us, That the Earls and Barons, were not before the first King; for sayes he, *Reges associant sibi Comites, & Barones, ordinantes eos, in magno Honore*: Earls and Barons are made by the King, and assumed for Councel, therefore invested with a long Robe; and for Defence, therefore girt with a Sword; which shews, the Power they have is not originally in themselves, but proceeds from the Kings Grant and Favour; they are meer Concessions of Grace. As

Dodridges Tract of the Nobility, pag. 8. 34 *Co. lib.* 7. *Nevils* Case *Co.* 2. *Inst.* 5, 6. *lib.* 12. Earl of *Shrewsbury's* Case.

As for the House of Commons, I hope they will not pretend to any ancienter or better Title than the Lords can pretend to. Sure it is (says Sir *Robert Filmer*) that during the Heptarchy, the People did not elect any Knights, because *England* was not then divived into Shires or Counties.

All our Books can informe us, That the King is *Principium, Caput, & finis Parliamenti*, and that every Member, as well as both Houses, have their Right, and sitting there from him; they are summoned to sit in that Council, by Virtue of the Kings Writ and Authority, without whose Call they cannot meet together, and at whose Pleasure they are dissolved in Law and bound to depart to their own Homes.

Secondly, As the two Houses have not a *Partnership* in the Supremacy, or *Legislation* originally in themselves, so neither have they it, by way of Derivation; if the Houses have a coordinate, coequal, and corrival Authority in enacting Laws, derivatively, then it must proceed from the King, one of these two ways, that is to say, either by way of Grant, or by way of Custom and Prescription.

1. They cannot have it, *via Concessionis*, by way of Grant; for Kings Reign by a higher than any humane Law, and therefore no Act of any King can divest himself or Successor of any essential Attribute of Power due to him or his Successor. And if Kings Actions did oblige themselves or Successors, then were this

Vide Treatise instituted *Sacro-Sancta Regum Majestati.*

this Crown not free, but subject to the Pope, because our King *John* made it so; but I do utterly deny, that ever any King of this Realm did ever grant the Parliament or either House, a concurring Power or Fellowship of making Laws with him; tis true they have an indefeasable Right *ad aliquid*, to some Act, of exercising the Supreme Power. That is to say, to the making of Laws, by giving their Assent, without which no Statute is binding. *Co. 4. Inst. 25. Co. Litt. 159. b.*

And this belongs to the Houses, by a fundamental Constitution of the Kingdom; a Fundamental I say, not of Monarchy simply, but of Government as now it stands; a Fundamental not of the Regal Power, but the Peoples Security: For Government may receive a Change and Qualification, by Consent of King and People, from more absolute, to qualified, or restrained, and such a Constitution is a Fundamental, because all after-Laws are built upon it, but not a Fundamental to the Regal Power, for it gives not Power to the King, as it does to the two Houses, but rather lessens his Power, by limiting upon Agreement, that he will not impose any Laws upon his People without their Consent.

2. They cannot have it *via præscriptionis*, by way of Prescription; for no Usage, Prescription or Custom can take place, where there are Records or Proofs enough to the contrary; And whether there are not Proofs to the contrary, let the Reader take so much Pains as

to

to view the Styles of the Acts printed from 9. *H.* 3. untill *H.* 7. his time, and he will find, that the King always made the Law, and the Lords Spiritual and Temporal did assent, at the Instance, Request, or Petition of the Commons, or by the King, with the Assent of the Lords and Commons, which was not or but rarely used, unless in *Richard* the Second's times. In *Henry* the Seventh's time, the Commons got to have their Assent as well as the Lords in passing Laws; and this manner of passing Laws continued generally untill *Edward* the Sixth's time, where they were made sometime by the King, with the Assent of the Lords Spiritual and Temporal and Commons in Parliament, and sometime by the Parliament. But the Form of enacting Laws by the King and the Lords Spiritual, Temporal, and Commons assembled in Parliament was seldome or never used before Queen *Mary's* time.

Vide Mr. *Roger Coke lib.* 3. *c.* 3. of the municipal Laws of *England*, *f.* 115. 116.

So that we may very well conclude, by what has been said against Coordination, *That the making of Laws is a peculiar and incommunicable Privilege of the Supreme Power; and that the Office of the two Houses in this Case is only consultive or Preparative, but the Character of the Power rest in the final Sanction, which is in the King*; and therefore when the Lords and Commons present any Bill to the King, and he passes it; this is an Act of Parliament, which is no more a Law of the Lords and Commons, than the Laws passed at

at the Petition or Rogation of *Celius*, *Cassius*, *Sempronius* &c. were the Laws of *Celius*, *Cassius*, and *Sempronius*.

Let the Reader note this for a Conclusion, *viz.*, Though the King cannot make new, or abrogate old Laws, without Consent in Parliament; yet the Interpretation of these *Laws* solely belongs to his Majesty; for Mr. *Bracton* in the Reign of *H.* 3. tells us, that in doubtful and obscure Points, the Interpretation and Will of the King, is to be expected, *Since it is his part to interpret, who made the Law.* In a Word, Our King hath as much Right by our Constitutions as that Civil Law gave the *Roman* Emperour; *Inter æquitatem Juscque inter positam Interpretationem nobis solis licet, & oportet inspicere. L.* 1. *c. de Leg. & Constit.* or that other; *Rex solus judicat de Causa à Jure non destituta.*

3. Prerogative.

Power of Calling and Assembling Parliaments.

Jus Convocandorum Comitiorum.

THE King is armed with divers Councils, of which the Court of Parliament is the highest and most transcendent, consisting of the Kings most excellent Majesty, sitting there as supreme Head, in his Royal Poli-

Politick Capacity, and of (*a*) three Eſtates, the Lords Spiritual, the Lords Temporal, and the Commons of the Realm, the Calling and Aſſembling of which Three Eſtates, is a part of the Supreme Power, or Regal Prerogative, inſeparably annext to the Sacred Perſon of the King; On whoſe Royal Pleaſure, as the Convoking, ſo the Appointment of Time and place for the Holding of Parliaments, their Prorogation, Adjournment, Continuation, Diſſolution, do ſolely depend.

(*a*) For in our Laws, the Clergy, Nobility, and Commonalty are three Eſtates. *We your ſaid moſt Loving*, &c. *Subjects*, *viz.* The Lords Spiritual and Temporal, and the Commons, *Repreſenting Your three Eſtates of Your Realm of* England. 1 *Eliz. c.* 3. *The Clergy being one of the greateſt States of this Realm.* 8 *Eliz. c.* 1. This Court conſiſteth (ſays *Coke* in 4. *Inſt. f.* 1.) of the King, *&c.* and of the Three Eſtates of the Realm. Of the Lords Spiritual and Temporal, and Commons.

The Authorities intended for the Proof of this Prerogative, are theſe:

None can Begin (ſays *Coke*) Continue, or Diſſolve the Parliament, but by the King's Authority. *Co. Lit.* 110. *a. Co.* 4 *Inſt. f.* 6. *&* 28.

In the Reign of King *Charles* the Firſt, it was Declared, That the Appointment of Time and Place for the holding of Parliaments, hath always belonged, as it ought, to his Majeſty and his Royal Progenitors. 16 *Car.* 1. *c.* 1.

In the Reign of the King that now is, It is acknowledged, That it is a Prerogative inherent to the Imperial Crown of *England*, the Calling and Aſſembling of Parliaments. 16 *Car.* 2. *Regis.*

Co. 4. Inſt. f. 46. Rot. Parl. 1 H. 5. num. 26. Note, As all Commiſſions concerning the Adminiſtration of Juſtice, doe determine by the Demiſe of the King, ſo upon his Deceaſe, a Parliament then in Being, is abſolutely Diſſolved; yea, though an Act of Parliament be made, that the Parliament ſhall not be Diſſolved, but by Act of Parliament, as the Statute 16,17 *Car.* 1. *c.* 7. Which Parliament is declared to be Diſſolved upon the Death of the Royal Martyr. *Vide* 12 *Car.* 2. *nunc. Regis c.* 1. and 13 *Car.* 2. *c.* 1.

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4. Prerogative.

Power of Life and Death.

Poteſtas vitæ ac necis.

Juſtice and Mercy (the brighteſt Stars in the Sphere of Majeſty) are Incidents inſeparable to an Imperial Throne. The exerciſing the Sword, as well as of calling Parliaments; of puniſhing, rewarding, and pardoning, as well as Reigning, is a Prerogative inherent to the Crown of *England*.

The Authorities for the proof of this Prerogative are theſe:

Lib. 3. c. 8. de Corona. Rex (ſays our *Bracton*) *poteſtatem habet judicandi, de Vita, & Membris, vel tollendi Vitam, vel concedendi.*

Fleta lib. c. 16. *Vita & Membra hominum ad tuitionem, vel ad pœnam cum deliquerint, in poteſtate Regum ſunt.*

A

A Cheſcun Roy, per reaſon de ſon office, il appent a fair Juſtice en execution des Leyes, Grace, en granter pardons, &c. 9 Ed. 4. 2. a.

Jam ſi quiſpiam rei Capitalis, reus propoſcerit Regis miſericordiam pro forisfacto ſuo timidus mortis, vel Membrorum perdendorum poteſt ei lege ſuæ dignitatis condonare, ſi velit etiam mortem promeritam. Inter Leges Edvardi Lambard fol. 143.

By the Statute of 27 H. 8. c. 24. It is declared, that no man can pardon Treaſons, Murders, Man-ſlaughters, or any kind of Felonies, but the King only. [illegible] fol. 27

With our Law doth concur the Civil Law, *Ad Majeſtatem ſpectat poteſtas Vitæ ac necis, cum ſolus Princeps primario habeat Jus gladii; unde pœna minui, & reſtitutio in integrum concedi duntaxat a Principe poteſt.* Zoucheus pars 4. ſect. 4. de jure Principis.

Impeeratori licet (ſays St. *Auguſtine*) *revocare ſententiam, & reum mortis abſolvere, & ipſi ignoſcere*: His Reaſon is this, *Quia non eſt ſubjectus Legibus, qui habet in poteſtate Leges ferre*; The ſame with that of *Lactantius*: *Legem cum poneret, non utique ademit ſibi omnem poteſtatem, ſed habet ignoſcendi Licentiam.*

5. Prerogative.

Power of reſtoring Infamous Perſons to their Former Credits.

Jus infames famæ reſtituendi.

ALthough the Poet tells us, *pœna poteſt redimi, culpa perennis erit*, Pardon may diſcharge a man of puniſhment, but the Scandal of the Offence remains; yet in our Law, when the King doth grant a Pardon to any Subject, for an Offence perpetrated againſt the Dignity of the Crown; the King by that Pardon, doth not only take away the puniſhment, but likewiſe cleareth the Perſon of the Crime and Infamy wherein no private Man is intereſſed, but the Commonwealth, whereof the King is the Head, and in whom all general Injuries reſide, and to whom the Reformation of all publick Wrongs doth appertain: Wherefore, a man can no more call another Thief or Traytor, after after a General or Special Pardon, than to ſay a man is a Villain, that is manumized.

In proof of this Prerogative, this Authority may be produced.

Hobarts Reports. Cuddington v. Wilkins f. 67, 81, 294.

An Action of the Caſe was brought, for calling a man Thief, the Defendant Juſtified, becauſe before time he had ſtoln ſomewhat: the Plaintiff replied, That ſince the ſuppoſed Felony, the General Pardon in the 7*th.* year of the King was made, and makes the uſual Averment to bring himſelf within the Pardon; where-

whereupon the Defendant demurred, and it was adjudged for the Plaintiff: For the whole Court were of Opinion, that though he were a Thief once, yet when the Pardon came, it took away not only *Pœnam*, but *Reatum*: For Felony is *contra Coronam & Dignitatem Regis*.

To ſhew further the force of the King's Pardon, I will ſubjoyn this Caſe, *viz.*

If in an Appeal of Felony, the Defendant does offer Tryal by Battel, the Plaintiff may Counter-plead it, by ſaying, that the Defendant being apprehended, eſcaped or brake Priſon, which preſumes a guiltineſs: now if the King pardon the breaking of *Priſon*, the Counter-plea fails, and the Defendant ſhall be reſtored to the Battel: And yet the Reaſon of the preſumption of the guiltineſs is the ſame after the pardon, as it was before. But the Reaſon of the Caſe is, that the King's pardon doth not only clear the Offence it ſelf, but all the dependencies, penalties and diſabilities incident unto it, and that againſt the Appellant. 2 *E.* 3. *Cor.* 134. *Co.* 3. *Inſt. fol.* 237.

That his Majeſty hath power not only to Confer Grace, but alſo to deliver Subjects from the Reproach of their former Miſcarriages: Let the Reader look into the Statutes of 12. *Car.* 2. *c.* 11. 13 *Car.* 2. *c.* 1.

6. Prerogative.

Power of creating Magiſtrates.

Poteſtas conſtituendorum Magiſtratuum ad juſtitiam expediendam.

ANnex'd to the Sovereignty of *England*, is the Right of Judicature, of hearing and deciding all Controverſies; for this Kingdom (as all other Kingdoms in their Conſtitution) is with the Power of Juſtice, according to the Rules of Law and Equity, both which being in the King as Sovereign, were ſetled in ſeveral Courts, as the Light being firſt made by God, was after placed in the great Bodies of the Sun and Moon; and therefore the Lord Chancellor, (or Lord Keeper) the Judges of the Realm, and all other Juſtitiaries, are but Miniſters to his Majeſty, who (being not able alone to manage all Matters and proceedings in Law) hath delegated the Power of Juſtice to theſe Perſons to be Inſtruments; by which his Majeſties Power is conveyed to every Place, whither the Virtue of it is extended.

The Authorities to be produced in Proof of this Prerogative, are theſe:

I will begin with *Bracton*, (a man worthily famous for his Knowledge, in the Civil, and Common-Law) who ſpeaks thus.

Sciendum, quod ipſe Dominus Rex, qui ordinariam habet Juriſdictionem, & dignitatem, & poteſtatem ſuper omnes, qui in regno ſuo ſunt:

Lib. 2. c. 24.

Habet

Habet enim omnia Jura in manu ſuâ, quæ ad Coronam, & Laicalem pertinent poteſtatem, & materialem gladium, qui pertinet ad Regni gubernaculum: Habet etiam Juſtitiam, & Judicium, quæ ſunt Juriſdictiones, ut ex Juriſdictione ſuâ, ſic ut Dei Miniſter, & vicarius, tribuat unicuique quod ſuum fuerit: Habet etiam coercionem, ut delinquentes puniat, & coerceat. Item habet in poteſtate ſua Leges & Conſtitutiones, Aſſiſas in Regno ſuo proviſas &c. ipſe in propriâ perſonâ ſuâ obſervet, & ſubditis ſuis faciat obſervari, nihil enim prodeſt Jura condere, niſi ſit qui Jura tueatur. The Engliſh of it is this; The King hath ſupreme Power in all Civil Cauſes, and is over all Perſons; all Juriſdictions are in him; the material Sword of Right belongs to him, and whatſoever conduces to Peace, that the People committed to his Charge may lead peaceable and quiet Lives. The Power of holding Aſſizes is derived from him, and of puniſhing Delinquents; for Laws were vainly enacted, if there were not ſome Body enabled to protect us by defending them, *&c.*

The Author of the Book called the *Mirror*, expreſſes himſelf thus: *Judgment vient de Juriſdiction que eſt la plus grand Dignity quæ appent al Roy. Juriſdiction ne poet nul aſſigner forſque le Roy. Le Roy per le Authoritie de ſa dignitie fait Juſtices en divers Degrees, & limit a Cheſcun poiar.* Cap. 4. Sect. 2. & Sect. 4.

King E. 1. in the Beginning of his Book of Laws, called *Breton*, declares, *That he is Gods Vicegerent, & that he hath diſtributed his Charge*

into ſeveral Portions, as being not able alone to hear and determine all the Complaints of his Subjects.

Lib. 1. *c.* 17. *Non poteſt aliquis* (ſays Fleta) *judicare in temporalibus niſi ſolus Rex, vel ſubdelegatus.*

12 *H.* 7. 17. *b.* *Al Commencement, tout L' Adminiſtration de, Juſtice fuit en un main*, viz. *en le Corone, donques, apres multiplication de People, Adminiſtration de Juſtice fuit devide*, &c.

Co. lib. 12. Caſe of Conſpiracy. *f.* 25. The King himſelf is *de Jure* to deliver Juſtice to all his Subjects, and for this, that he himſelf cannot do it to all Perſons, he delegates his Power to his Judges, who have the Cuſtody, and Guard of the Kings Oath.

It is enacted by 27 *H.* 8. *c.* 24. That no Perſon of whatſoever Condition, ſhall have any Power to make any Juſtices of Peace, or Juſtices of Goal-Delivery; but all ſuch Officers ſhall be made by Letters Patents, under the Great Seal, in the Name and Authority of the King and his Heirs, in all Shires, Counties, Counties Palatine, and other Places of the Realm. This Act is a Recontinuance of Liberties taken from the Crown.

With our Laws agrees the Law Imperial, *Ad curam principis magiſtratuum Creatio pertinet non ad populi favorem in L. vinc.* F. *ad legem Amb.*

Creatio Magiſtratuum (ſays Zonarius) *maxima pars eſt Imperatorii Muneris.*

7. Prero-

7. Prerogative.

Power of making War, and the ſole Diſpoſition of the Militia.

IT is the Office of the King to defend, and by Arms to protect his People; and the Power of War, as the Power of the Sword, is a Branch of his Imperial Authority; and that no way competible to any, but either to the King himſelf, in whom reſides the Supreme Power, or to thoſe that are Commiſſionated by him. *Jus Belli ſuſcipiendi.*

Authorities in Proof of this Prerogative are theſe:

Wars do make Aliens Enemies, and *Bellum indicere* belongeth only to the King. *Co. lib. 7. Calvin's Caſe.*

No Subject can levy War within the Realm, without Authority from the King, for to him only it appertaineth. *Co. 3. Inſt. f. 9. F. N. B. f. 113. a.*

The Prelates, Earls, Barons, and Commonalty of this Realm declared, *That to the King it belongeth, and his Part it is, through his Royal Signiory ſtraitly to defend Force of Arms, and all other Force againſt his Peace at all times, when it ſhall pleaſe him, and to puniſh them which ſhall do contrary, according to the Laws, and Uſages of this his Realm.* *Co. lib. 9. Wiſeman's Caſe. Anno 7 E. 1*

And accordingly in Parliament, in after-times, the King alone did iſſue his Proclamations, prohibiting bearing of Arms by any Perſon,

Perſon, in or near the City, where the Parliament was, excepting ſuch of the Kings Servants, as he ſhould depute, or ſhould be deputed by his Commandment, and alſo excepting the Kings Miniſters.

And this Power of raiſing Forces to be ſolely in the King is ſo known, and inſeparable a Right to the Imperial Diadem; that when in the Reign of *H.* 8. there being a ſudden Rebellion, the Earl of *Shrewsbury*, without Warrant from the King, did raiſe Armes for the Suppreſſion thereof, and happily ſuppreſſed it; yet was he forced to obtain his Pardon.

If any levy War to expulſe Strangers to deliver men out of Priſons, to remove Counſellors, or againſt any Statute, or to any other end, pretending Reformation of their own Heads, without Warrant from the King; This is levying of War againſt the King, becauſe they take upon them Royal Authority, which is againſt the King.

Co. 3. Inſt. 160. 11 H. 7. 22. If any by mutual Aſſent, do uſe Juſts, or Turnements, or to play at Sword and Buckler, or any other Deeds of Arms, and the one killeth the other, this is Felony, for that it is not lawful to uſe them without the Kings Licenſe.

Britan. c. 20. Co. Litt. 5. a. Co. 2. Inſt. 30. Co. 3. Juſt. 201. No Subject can build a Caſtle or Houſe of Strength imbattelled, or other fortreſs defenſible, without Licenſe from the King. If any Subject ſhould be ſo hardy to build a Caſtle of his own Head, I will aſſure him 'twill prove but

but a Caſtle in Air. Although theſe Authorities aforeſaid are ſufficient to demonſtrate to the Reader, That by the Laws of the Land, the Power of raiſing of Forces or Armes, or levying of War, for the Defence of the Kingdom, or otherwiſe, hath always belonged to the King, and to him only; yet I will add one Authentique Evidence more, and it ſhall be the Statute of 13 *Car.* 2. which is not a Conſtitutive Law, but an Act Declarative, not introductory of a new Law, but declaratory of the old Fundamental Laws of this Realm in this point of Prerogative.

In the Reign of the King that now is, it has been declared, That within his Majeſties Realms and Dominions, the Supreme Government, Command and Diſpoſition of the Militia, and of all the Forces by Sea and Land, and all Forts and Places of Strength, is, and by the Laws of *England* ever was the undoubted Right of his Majeſty, and his Royal Predeceſſors, Kings and Queens of *England*, and that both or either of the Houſes of Parliament, cannot or ought to pretend to the ſame, nor can, nor lawfully may raiſe or levy any War offenſive or defenſive, againſt his Majeſty, his Heirs, or lawful Succeſſors. 13 *Car.* 2. *c.* 6. *Vide* 14 *Car.* 2. *c.* 3.

Agreeable to our Laws is that which the Doctors of the Imperial Law aſſert. *viz. In Communione militari primus eſt, & ſupremam poteſtatem obtinet Imperator; nam poſt quam Lege Regia, populus in Imperatorem omnem ſuam poteſtatem contulit, ad ipſum etiam Belli & Pacis arbitrium devolutum eſt.* In

In the *Codes* of *Justinian*, is extant the Constitution of the Emperours *Valentinian* and *Valens*; *Nulli prorsus nobis insciis, atque inconsultis quorumlibet armorum movendorum Copia tribuatur.* Agreeable to which is that of St. *Austin*: *Ordo Naturalis mortalium paci accommodatus hoc poscit; ut suscipiendi belli Authoritas atque consilium penes Principes sit.*

8. Prerogative.

Power of making Leagues and Truces with Foreign Princes.

Fœderum percussio penes Regem.

AS it appertaineth to his Majesty, to provide that Peace be continued in the Heart of his Empire, and that things contrary to publick quiet be by foresight eschewed; so 'tis competible to his Royal Dignity to procure Amity, to make Leagues and Truces with Foreign States, and to maintain them, by preventing whatsoever may tend to the Violation of Truce and safe Conduct.

The Authorities for proof of this Prerogative are these:

Co. lib. 7. Calvins Case. Leagues between our Sovereign and others, are the only means to make Aliens Friends; *& fœdera percutere*, to make Leagues, only and wholly pertaineth to the King.

2 *H.* 5. *c.* 6. To the King only it belongs to make Leagues with Foreign Princes.

Brian

Brian held, That if all the Subjects of *England* would make War with the King in League with the King of *England*, without the Assent of the King of *England*, that such a War was no Breach of the League. 19 E. 4. 6. *Co.* 4. *Inst.* f. 152.

With our Law concurs the Learned *Grotius*; *Pactione inire* (says he) *quæ bellum finiant, eorum est quorum est bellum; Rei enim suæ quisque Moderator.* *Lib.* 3. *c.* 20. *nu.* 21.

Livy says, *Fœdera esse, quæ fiunt jussu summæ potestatis.*

Tacitus, of the Emperour: *Donec referantur Literæ, an paci annueret.*

Seneca: *Imperator fœdus percussit, videtur Populus Romanus percussisse, & fœdere continetur.*

In Regnis, Regum est fœdus facere, says another.

Note, That the Kings of this Realm still used to refer Causes petitioned in Parliament, to the proper places of Cognizance and Decision; But for matter of War and Peace, the Kings ever kept it in *scrinio Pectoris*, In the Shrines of their own Breasts, Assisted and Advised by their Council of State. As for Example:

In the 4*th.* year of *Ed.* 3. the Commons petitioned, That the King would enter into certain Covenants and Capitulations with the Duke of *Brabant*; in which Petition, there was also inserted somewhat touching a Money-Matter; the King's Answer was, that for what concerned the Moneys, they might

might handle it, and examine it; but touching the Peace, he would do as to himself seemed good.

In the Second year of K. *R.*2. the Merchants of the Sea-Coasts, did complain of divers Spoils upon their Ships and Goods by the *Spaniard*. The King's Answer was, that with the Advice of his Council, he would procure remedy.

In 50 *Ed.* 3. The Merchants of *York* petitioned in *Parliament* against the *Hollanders*; and desired their Ships might be Stayed both in *England* and at *Calais*. The King's Answer was, Let it be declared to the King's Council; And they shall have such remedy, as is acording to reason. I will add one more, and that is a very remarkable Precedent; and it is in 17 *R.* 2. This King made offer to the Commons in *Parliament*, That they should take into their Considerations matters of War, and Peace then in Hand. The Commons in Modesty excused themselves, and answered: *The Commons will not presume to Treat of so high a Charge.* The Reader may see more of these Matters in Sir *Francis Bacon's Reports* in the House of Commons, of Speeches delivered by the Earls of *Salisbury*, and of *Northampton*, and at a Conference, touching the Petition of Merchants. *Parl.* 5. *Jacob.*

9. Piero-

9. Prerogative.

Power of ſending and receiving Ambaſſadors.

AS it is the Law of all Countries, That Meſſengers of Peace, and ſuch as are employed to procure and maintain Amity, ought to be defended againſt all Injuries, to be ſafe and ſecure in the places where they reſide. Now who can be a Competent Perſon to receive ſuch Negotiators, but he that can afford them ſafe Conduct? And who can perform that, but he that hath Authority to inflict penalties on thoſe that dare offer Violence unto ſuch Sacred Perſonages? and none can inflict puniſhment, but his Majeſty, that is the Sovereign, Life, and Head of the Law; and therefore *Jus Legationum* belongs only to the Dignity and Royal Eſtate of the Imperial Crown of *England*. *Jus mittendi legatos, ac recipiendi.*

The Proofs intended for theſe Prerogatives are theſe:

Nulli niſi Abſoluti Principes & qui Majeſtatis Jura habent, legatos conſtituere poſſunt, (ſays Mr. *Cambden*) None but Abſolute Princes, and ſuch as have the Prerogative of Majeſty can Conſtitute Ambaſſadors. *Camb. Eliz. Anno* f. 42. in Engliſh. *Co.* 4. *Inſt.* f. 153.

Of Ancient time, and until later days (ſays *Coke*) no Ambaſſador came into this Realm, before he had a ſafe Conduct from *Co.* 4. *Inſt.* f. 154.

the

the King: For as no King can come into this Realm, without Licenſe or ſafe Conduct, ſo no *Prorex*, which repreſenteth the King's Perſon, can do it.

1 *H.* 7. 10. *a.* *Huſſey* ſaid, That in the time of K. *Ed.* 4. a Legate from the Pope came to *Calais*, to have come into *England*; but the King would not ſuffer him to come into this Realm, untill he had taken an Oath, That he ſhould attempt nothing againſt the King or his Crown. That this was the Ancient Law of *England*, appears in our *Cambden's Eliz. Anno* 1561.

To receive Ambaſſadors, *Curtius* tells us, that it was King-like.

Et priſtina quidem Regia ſpecies manebat; nam & legati gentium Regem adibant, & copiarum duces aderant, & veſtibulum ſatellites, armatique compleverant.

10. Prerogative.

The Power of Coyning Money.

Jus Cudendi ſeu poteſtas monetandi. THE Coyning of Money is a Prerogative of Sovereign Power, and reckoned among the *Regalia's* of the Crown; Hence is it that no Money can be Currant but by the King's Authority; And in caſe any Subject preſume of his own Head to Coyn Money he incurs the heinous Crime of High Treaſon: And as it is his Majeſties Right to

mak

make Money; ſo 'tis his Prerogative to make any Forreign Coyn Currant within his Dominions, by his Royal Proclamation.

The Authorities to be produced for proof of this Prerogative are ſuch as theſe:

It doth appertain to the King only to put a value to the Coyn, and make the price of the quantity, and to put a Print to it; which being done, the Coyn is Currant for ſo much. *Plow. Com.* 316. *vide* Davys Reports *Le caſe de* mixt Moneys.

The Money of *England* is the Treaſure of *England*, and none is ſaid to be Treaſure-Trove but Gold and Silver; and this is the reaſon: That the Law doth give to the King Mines of Gold and Silver, thereof to make Money, and not any other Mettal, which a Subject may have, becauſe thereof mony cannot be made. *Co.* 2. *Inſt.* 577.

To Counterfeit the Kings Coin, is declared High Treaſon, by 25 *Ed.* 3. *c.* 2. *de proditionibus.*

Reſolved, that *Spaniſh* Silver was lawful Money of *England* by Proclamation, in the time of *Phil.* and *Mary*, and ſo *French* Crowns: For the King by his Proclamation may make any Foreign Coyn lawful Money of *England*. With our Law goes Hand in Hand the Law Imperial. *Co.* Lit. 207. *lib.* 5. Wades Caſe.

Jus cudendæ monetæ, niſi cui ab Imperatore conceſſum fuerit, nemo uſurpato.

Monetam ſeu nummos Cudere non cujuſvis eſt, non privati non cujuſvis Civitatis, ſed ejus tantum, qui Magiſtratum gerit. Id enim Jus inter Regalia Jura cenſetur. Gothofr. *Princeps ad arbitrium ſuum,* *Budelius de Renumariâ. lib.* 1. *c.* 5.

suum irrequisito assensu subditorum valorem monetæ constituere potest, quia populus, quantum ad hoc omnem potestatem, & jurisdictionem in Imperatore transtulisse dicitur.

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11. Prerogative.

The Power of Ennobling.

Jus Nobilitandi. AS the Beams of the Sun do spread themselves in giving Light, Heat, and Comfort unto all living things without any Diminution of his proper Virtue, either in Substance, Course, or Brightness, so from the sacred Power and royal Authority of the Kings and Queens of *England*, all Dignities do proceed; yet their own Princely and Sovereign Power, *In suâ primâ Sublimitate*, doth not suffer or sustain any Blemish or Detriment.

The Proofs for this Prerogative are such as these:

Co. 4. Inst. 243. From the Royal Dignity of the King, all other subordinate Dignities, *tanquam Lumen de Lumine* are derived, without any Diminution.

Co. lib. 12. Countess of *Shrewsbury's* Case. All Honour and Nobility is derived from the King, as the true Fountain.

Co. Litt. 165. *a. lib.* 12. *f.* 112. The King is the Sovereign of Honour and Dignity, and therefore if a Baron dies having Issue divers Daughters, the King may confer the Dignity on him who marries any of them.

So

So in like manner none may ſurrender, give up, transfer or part with the Honour, Degree, Title, or Dignation Majeſty hath given or impreſs'd upon him to any Perſon whatſoever; but it muſt neceſſarily retorn to the ſame Royal Fountain, whence it firſt took it's Creation, and that by matter of Record; as in the Caſe of a *Barronet*.

Sir *Edw. Terril's* Caſe, 14. *Caroli primi.*

As it appertaineth to the King to confer Titles of Honour, ſo at the Common Law, the King by his Prerogative Royal, might give ſuch Honour, and Placing to his Councellors and other his Subjects, as ſhould ſeem good to his Royal Wiſdom.

Co. 4. *Inſt.* 361. 31. *H.* 8. *c.* 10.

With our Common Law does concur the Civil Law: *Inter Nobiles primus eſt Imperator, cum omnis ordo ab ipſo pendeat, ordinis cujuſque arbitrium primo eſt penes Imperatorem.*

Zoucheus. pars 2. *Sect.* 2. *de Nobilitate. Gothofredus ad D.* 2. 4. 10. 2.

Princeps ingenuum facere poteſt, poteſt & nobilem facere, & ut Galli loquuntur, Il peut faire d' un villein, un chivalier.

12. Prerogative.

The Supreme Care and Superintendency in Church-Matters is vested in the King.

Curatio Sacrorum penes Regem.

THE King (though no Bishop in the Church to exercise the sacerdotal Function yet) is the rightful Overseer (as to the Externals) for the ordering Ecclesiastical Matters; To repress the Novelties of Shisms, and corrupt Opinions, to reform the Undecencies and Confusions in sacred Administrations, to defend the Church of *England* against all Sactilegious Invasions, upon her Rights and Revenues.

The Law before the Conquest was this:

Co. 4. Inst. 342. The King, who is the Vicar of the highest King, is ordained to that end, that he should govern and rule the Kingdom and People, above all things the Holy Church; and that he defend the same from wrong Doers, and destroy and rout out Workers of Mischief.

Co. 2. Inst. f. 3. *Ecclesia est infra ætatem, & in Custodia Domini Regis, qui tenetur Jura & hæreditates sua manu tenere & defendere.*

There was a Book published in *Latine*, *Anno Domini*, 1573, by the most Reverend Prelate *Matthew Parker*, Arch-bishop of *Canterbury*, very well skill'd in Antiquity, in which 'tis affirmed in these very words:

Co. lib. 9. f. 38. a Heusloes Case.

Re

Rex Angliæ olim erat Conciliorum Eccleſiaſticorum præſes, vindex temeritatis Romanæ, propugnator Religionis, nec ullam habebant Epiſcopi Authoritatem præter eam quam à Rege acceptam referebant. Jus teſtamenta probandi non habebant, Adminiſtrationis Poteſtatem cuique delegare non poterant.

'Tis a groſs Errour to think that the King's of *England*, their Title of *Defender of the Church* is no older than King *H.* 8. for above 300 years ago, in the old Writs of King *Richard* 2. to the Sheriffs, the old Style runs, *Eccleſia, cujus nos Defenſor ſumus, & eſſe volumus.*

Reges Sacro oleo uncti, ſunt Capaces ſpiritualis Juriſdictionis. 33. E. 3. *Roy.* 103.

Reſolved in the Reign of King *James*, that the Depriyation of Puritan Miniſters by the Commiſſioners, for the refuſing to conform themſelves to the Ceremonies appointed by the laſt Canons was lawful, becauſe the King hath the Supreme Eccleſiaſtical Power, which he delegated to the Commiſſioners, whereby they had the Power of Deprivation, by the Canon Law of the Realm; and the Stat. of 1 *Eliz.* which appoints Commiſſioners to be made by the Queen, doth not confer any new Power, but explain and declare the ancient Power; and therefore they held it clearly, that the King without Parliament might make Orders and Conſtitutions for the Government of the Clergy, and might deprive them, if they obeyed not, and ſo the Commiſſioners *Cro.* 2. *part. anno* 2. *Jac. fol.* 37.

might deprive them, but they could not make any Constitutions without the King.

Co. lib. 5. de jure Regis Ecclesiastico. Sir John Davys Reports in the Case of Premunire.

In short, the King of *England* hath Power by the Ancient Laws of the Realm, to visit, reform and correct all Abuses and Enormities in the Church; and therefore the Statutes made in the Reigns of *H. 8. Ed. 6.* and Q. *Eliz.* did but restore the Imperial Crown to its Ancient Right and Supremacy, that was usurped by the Pope.

What Authority the Emperour had heretofore, in matters Ecclesiastical, *Demetrius Chomatenus* will inform us; and these are his words: *Imperator ut communis Episcopus existens, & nominatus Synodalibus præest Sententiis, & robur tribuit; Ecclesiasticos ordines componit, & legem dat vitæ politiæque eorum qui altari serviunt, solo Sacrificandi excepto ministerio, reliqua Pontificialia privilegia Imperator representat.*

But maugre all that hath been hitherto said in Vindication of his Most Excellent Majesties Supremacy in Causes Spiritual; the *Romanists* are apt to raise these Spirits or Objections.

Objection 1.

They say, That we of the Church of *England*, by attributing to the King the Supreme Government in Causes Spiritual, do give to our Princes, the Ministring of God's Word and the Sacraments.

To which calumnious and slanderous Objection my Answer shall be taken out of the Articles

Articles of Religion, allowed in the Church of *England*; and 'tis this, *An.* 5. *Eliz.* 1562. *Act* 37.

'That where we attribute to the King's Majesty the Chief Government; we give not 'to our Princes the Ministring either of God's 'Word, or of the Sacraments; but that only 'Prerogative, which we see to have been given 'always to all Godly Princes, in holy Scriptures by God himself, that is, that they should 'rule all Estates and Degrees committed to their 'Charge by God, whether they be Ecclesiastical or Temporal, and restrain with the Civil Sword, the stubborn and Evil Doers.

To this I shall further add, what has been said by an Eminent Doctor of our Church, in vindication of the Supremacy, That Kings (*de jure*) claim in matters Ecclesiastical.

In the Old Testament, it is evidenced (says he) 'That *Moses*, and *Joshuah*, and *David*, 'and *Solomon*, and *Asa*, and *Jehosaphat*, and *Hezekias*, and *Josias* Governed the Priests 'and the whole Tribe of *Levi*, ordering the 'time of their Waiting, and Officiating their 'Courses; appointing Judges in Ecclesiastical 'Causes, and setting Presidents over those 'Judges, taking away Abuses and Corruptions in Religion; Commanding the Ark to 'be removed from one place to another; and 'calling the People by their Proclamations, to 'come, and meet there before the Lord; requiring the Priests to read the Book of the 'Law, and so reduce things to a Conformity 'with it; renewing the Covenant of *Moses*

'for Reformation of Religion; making Miſſi-
'ons of Prieſts into ſuch parts of the Country,
'as they ſaw needed their Aſſiſtance, and (to
'ſay no more) ejecting the High Prieſt him-
'ſelf; and depoſing him from his Office.

I could give the Reader other Authorities to this purpoſe out of divine Writers, but leſt he ſhould think that the Lawyer ſmells too much of Divinity, I will forbear, and referr him only to the Queens Declaration of her Authority in Eccleſiaſtical Affairs, *Anno* 1559. *Cambdens Eliz.*

Objection 2.

THEY ſay, that the Biſhop of *Rome* has heretofore exerciſed Eccleſiaſtical Authority within this Realm; and that too in ſeveral points of Juriſdiction, as,

1. In ſending Legates into this Kingdom.
2. In Appeals made to the Court of *Rome*.
3. In the Donation of Biſhopricks and other Eccleſiaſtical Benefices.
4. In the Exemption of Clerks from the ſecular Power.
5. In receiving Peter-pence. *&c.*

If ſo, why then (ſay the Papiſts) his Holineſs, has ſufficient Cauſe or Reaſon to clai

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the Right and Enjoyment of ſuch Eccleſiaſtical Rights?

It is anſwered, that true it is, That the Biſhop of *Rome* has ſometime exerciſed ſuch Points of Juriſdiction as before mentioned, ſince the Conqueſt; but ſay we, theſe Acts were exerciſed by meer Uſurpation, and Encroachment upon the Imperial Crown of *England*; and an Uſurpation (you muſt know) though with Poſſeſſion, and Submiſſion, does no more argue a Legal Authority in matters Spiritual; then a mans diſſeizing, abating and intruding into the Seigniory of another, and the Tenants atturning unto him, does create him rightful Lord of the Mannor.

Objection 3.

THE *Romaniſts* ſay by way of Objection, That our King *John* ſurrendred and gave up his Crown and Kingdom to the Pope, to be held in Fee-farm, and Vaſſallage of the *Roman* Church; and conſequently, that King *John* transferred the Exerciſe of the Supreme Eccleſiaſtical Power, that was (as we affirm,) one of thoſe Flowers, which makes the Imperial Crown in Force and Virtue,) unto the Biſhop of *Rome*; if ſo, then is his Holineſs his Claim Juſt and Legal.

It is anſwered; Though the Royal Power was then ſubject to the Popes Uſurpation, and the Exerciſe thereof was ſuſpended by King *John*'s Reſignation, yet it was without any

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the least Diminution of the Power it self, or the Right of exercising it, that belonged (*de Jure*) to his Royal Successors, who were not at all obliged by that same Act; for the Regality of this Kingdom cannot be alienated to any Foreign Prince or Potentate, as hath been sufficiently proved before in this Discourse.

Objection 4.

BUT supposing that the Act or Resignation of King *John* was void, and consequently of no Validity to bind his Successors, yet (say the Papists) it is evident in History, that the Pope did exercise Ecclesiastical Jurisdiction since the Reign of King *John*.

It is answered; If the Pope did so, yet 'twas still by Encroachment and Usurpation, which with a long (though quiet) Enjoyment, will not make his Holiness a lawful supreme Judge in Matters Ecclesiastical; for Continuance of time, will not render any thing good, which originally was not so, according to the Rules of the Imperial and Canon Laws;

Non firmatur tractu temporis, quod de Jure ab initio non subsistit.

Quod ab initio vitiosum est, non potest tractu temporis convalescere.

Quod ab initio de Jure non valet, tractu temporis convalescere non debet.

But the exercising of Supreme Ecclesiastical Authority, by the Pope, was so far from a quiet

quiet Enjoyment in this Kingdom, that he was ever and anon interrupted, and ſtoutly oppoſed by ſeveral of our Kings, as is manifeſted by the Statutes of Proviſors, made in the Reigns of *E.* 1. *E.* 3. *R.* 2. *& H.* 4. And indeed the Cauſes, that moved theſe Princes to make ſuch Laws, were of the greateſt Importance that could poſſibly ariſe in any State; for thoſe Laws were framed to uphold and maintain the Sovereignty of our Kings, the Liberties of the Subject and Commonwealth, which otherwiſe had been undermined, and utterly ruinated by the Uſurpation of the Biſhop of *Rome*.

I find, the Romaniſts have not yet done with me; they have ſomewhat to ſay, touching the Kings Power diſpenſative in matters Eccleſiaſtical.

Objection 5.

THE Romaniſts ſay, That many of the Canons or Eccleſiaſtical Laws, uſed in the Church of *England*, were firſt derived from *Rome*, and impoſed by the Popes Authority, on the Kings of this Realm, and therefore it moſt properly belongeth to the Biſhop of *Rome* to diſpenſe with ſuch Canons; for, *Cujus eſt condere, ejus eſt interpretari, diſpenſare &c.* and not to the King of *England*, or to any other deriving his Authority from him, whereupon the Canoniſts (ſay they) do aſcribe to the Pope, the ſole Prerogative of diſpenſing with Penal Laws

Laws, through all parts of Christendom; *Papa in omnibus purè positivis, & in quibusdam ad jus divinum pertinentibus dispensare potest, quia dicitur omnia jura habere in scrinio pectoris sui, quantum ad Interpretationem & Dispensationem.*

Lib. 6. de Constit. c. Licet.

To this *Romish* Objection, I return a double Answer.

1. That all the Ecclesiastical Laws of *England*, were not derived, nor brought from the Court of *Rome*: For, a long time before the Canon Law was authorized and published (which was since the *Norman* Conquest) the ancient Kings of this Realm, *Ina*, *Alfred*, *Edward*, *Athelstan*, *Edmund*, *Edgar*, *Canutus*, and *Edward* the Confessor, have by the Advice of their own Clergy, within the Realm; made divers Ordinances for the Government, of the Church of *England*. *Vide* our *Saxon* Laws by Mr. *Lambard*.

And since the Conquest, Provincial Synods have been held, and many Constitutions have been made by *William* the Conquerour. *H. 1. Ed. 1. &c.* all which are part of our Ecclesiastical Laws to this day. And therefore the Kings of *England* from time to time in every Age, have granted Dispensations in Ecclesiastial Affairs, as do testifie the Charters of *Kenulphus*, and *William* the Conquerour.

Vide Davys Rep. Le case de Commen. da. Co. lib. 5. Cawdries Case.

Besides, many of those Ecclesiastical Laws now here in Force, are not Laws derived from the Pope, but were extracted out of the Ancient

cient Canons, as well General as National. *Vide Davy's Reports. 72. b. 73. a. Le Caſe de Commenda. Anderſon's Reports, Evans* and *Aſcoughs Caſe. Co. lib. 4. Holland's Caſe.*

2. The other part of my Anſwer is this; Although ſome of the Popes Canons, are here received (I deny they were impoſed,) and uſed in this Realm, yet by ſuch an Allowance, Reception and Uſage, they became part of the Eccleſiaſtical Laws of this Nation: And for this Cauſe the Interpretation, Diſpenſation and Execution of thoſe Canons, belong only to the Kings of *England* and their Miniſterial and Judicial Officers within their own Dominions; and the King of *England* and his Judges have the ſole Juriſdiction in ſuch Caſes, and the Biſhop of *Rome* has nothing to do in the Interpretation, or Execution of thoſe Laws within the King's Dominions, altho' they were firſt deviſed at *Rome*, no more than the Chief Magiſtrates of *Athens* or *Lacedemon* could claim Juriſdiction in the ancient City of *Rome*; becauſe the Laws of the twelve tables were brought from thoſe Cities of *Greece*: no more ſay I, than the Maſter of *New Colledg* in *Oxford*, ſhall have Command and Juriſdiction over *Kings Colledg* in *Cambridge*; becauſe that the Private Statutes by which *Kings Colledg* is governed, were for the moſt part taken out of the Foundation-Book of *New Colledg* in *Oxford*: And certainly by the ſame reaſon the Emperour may claim Juriſdiction

diction in Maritime Cauſes within the Dominions of the King of *England*, becauſe we have received and admitted the Uſe of the Imperial Laws, for a long time, for the Determination of ſuch Cauſes.

I ſay further, ſeeing ſeveral of the Popes Canons were rejected by Temporal Princes. As for Example:

1. The Canon that prohibiteth the Donation of Benefices *per manum Laicum*, was always diſobeyed in *England*, *France*, *Naples*, and divers other Countreys.

2. The Canon to make Infants Legitimate, which were born before Eſpouſals, was particularly rejected in this Realm; when in a Parliament held at *Merton*, *Omnes Comites, & Barones una voce reſponderunt; Nolumus Leges Angliæ mutari, quæ huc uſque uſitatæ ſunt.* 20 *H.* 3. *c.* 9. *Co.* 2. *Inſt. f.* 98. *Co. Lit.* 245. *a.*

3. The Canon that exempteth Clerks from Secular Power, was never fully obſerved in any Kingdom of Chriſtendom.

4. The Canon that ouſteth Battel in a Writ of Right, was not here received.

5. The King of *England* and his Council, did not receive the Conſtitution of the Biſhop of *Rome* at *Lyons*, which excluded Men twice married, or *Bigamy*, from all Privilege of Clergy.

Seeing I ſay, ſuch Canons as theſe were rejected; it is an Argument undeniable, That thoſe Canons or Conſtitutions, had not their force

Force, from any Authority, which the Court of *Rome* had, to impose Laws on all Kingdoms; but from the Admittance and Usage of the Princes, and their Subjects, which have received and used them: for by the very same Reason they rejected those Canons above mentioned, they might have rejected all others, that were received.

So that 'tis pellucid and manifest, That although some of our Ecclesiastical Canons were first devised at the Court of *Rome*, yet these being establish'd and confirm'd in this our Realm, by a National Acceptance and Usage, are wholly now become English Laws, and shall be no more reputed *Romish* Constitutions.

And thus it is in the Kingdom of *France*, as *Rebuffus* does affirm; *Hæc Regula*, says he, *Ubique in regno Franciæ est recepta, & est Lex Regni effecta, & observatur tanquam Lex Regni, non tanquam Papæ Regula, & Papa eam revocare non potest.* And *Bodin* tells us, That the Kings of *France*, upon the Erection of all their Universities, have declared in their Charters, That they will receive the Profession of the Civil and Canon Law for *Usus* at their Discretion, and not be bound by those Laws but at their Royal Pleasure; and why the Church of *England* should be less free than the *Gallican* Church, passes my slender Comprehension. Nor are (indeed) the Kings of *England* less absolute, than the Kings of *France*; for the Bishop of *Derry* shews, in his Vindication, how the Emperours, Kings of *France*, *Spain*, and

and *Portugal*, have by their own Royal Authority convened National and Provincial Councils, which have not only determined without the Papal Authority, but very often in Contradiction to it.

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13. Prerogative.

The highest and last Appeal appertaineth to his Majesty.

Extremæ provocationis Jus.

THE Dignity Royal of *England* being not feudatory to the Majesty of any other Prince, as to a Superior Lord, but Imperial, and independant; our King hath plenary Power and Jurisdiction, to put a final Determination to all Causes whatsoever, without Provocation to any Foreign Potentate; and therefore from his Majesties Sentence lyeth no manner of Appeal.

The Proofs for this Prerogative, are these:

Doctor & Stu. Lib. 2. c. 36.

The King and his Progenitors, Kings of *England*, without time of Mind have had Authority to determine the Right of Patronage in this Realm in their own Courts, and are bound to see, that their Subjects have Right in that behalf within the Realm; and in that Case from him lyeth no Appeal.

At the Parliament holden at *Clarendon*, it was Enacted and Declared, *That no Appeals ſhould be made to the Court of* Rome. 10 *H.* 2. *c.* 8.

It is declared in 24 *H.* 8. That the King is inſtituted by the Goodneſs of God, with entire Power, to yield Juſtice, and final Determination of all Subjects within this Realm, in all Cauſes without Reſtraint or Provocation to any Foreign Potentate of the World. 24 *H.* 8. *c.* 12.

A general Prohibition in 25 *H.* 8. that no one ſhall be purſued out of the Realm to *Rome*, or elſewhere. 25 *H.* 8. *c.* 19.

Our Law (ſays Sir *Jo. Davis*) in his Preface Dedicatory, doth demonſtrate the Strength of Wit and Reaſon, and ſelf ſufficiency, which hath been always in the People of the Land, which have made their own Laws out of their Wiſdom and Experience, not begging or borrowing a Commonwealth from *Rome*, or from *Greece*, as all other Nations of *Europe*, but having ſufficient Proviſion of Law and Juſtice within the Land, have no Need; *Juſtitiam & Judicium ab Alienigenis emendicare.*

Note my Lord *Coke* ſays, that though the Statutes of 24. & 25. *H.* 8. do upon certain Appeals make the Sentence definitive, as to any Appeal; yet the King after ſuch definitive Sentence, as Supreme Head, may grant a Commiſſion *ad Revidendum*, becauſe that after a Sentence definitive, the Pope as pretended Supreme Head, by the Canon Law uſed to grant a Commiſſion to review, and ſuch Authority as the Pope had *de facto*, doth of Right belong *Co. 4. Inſt. f.* 341.

to the Crown, and is annexed thereunto by the Statutes of 26. *H.* 8. *c.* 1, and 1 *Eliz. c.* 1.

That the last Appeal belongs to the Sovereign Power, *Tacitus* can tell us in the fourth Book of his *Annals*; *Iisque instantibus ad Principem provocant*; and *Agrippa* who said unto *Festus This man might have been set at Liberty if he had not appealed unto* Cæsar.

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14. Prerogative.

The Power of Founding Colledges, Guildes, and Fraternities.

Potestas Collegia & universitates instituendi.

AS it is the sole Power of Almighty God to create Natural persons, so 'tis a Privilege Royal in his Majesty in imitation of the Deity, to Found Bodies Politick, to give them Life and Being, to make them (like himself) immortal. Hence no Corporation (be it Temporal or Eccleſiastical) can be erected within this Realm to continue in Succession, and to be capable of Endowments without the Authority and License of his Most Excellent Majesty.

King is said in our Law never to die.

The Authorities to back this Prerogative are these:

9 H. 6. 16. *b.* The King only may grant a License to Found a Spiritual Corporation.

The

The Pope cannot Found or incorporate a Colledg within this Realm, neither can he Assign or License others to give Temporal Livings to it; but it ought to be done by the King himself, and no other. *Co. Lib.* 4. Adam's and Lamberts Case. 107. *b.*

Albeit the Baronage of *England* might build Churches without the Kings License; yet could they not erect a Spiritual Politick Body to continue in Succession, without the Kings License. *Co.* 3. *Inst.* 202.

Any man may erect, and build an House for an Hospital, School, Working-house, or House of Correction, or the like, without any License: for that it is but a Preparation, and may be done as owner of the Soil, but by the Common-Law, could not incorporate any of them, without the Royal License. *Co.* 3. *Inst.* 202.

The Custom of *London* to make Corporations, was held void: For the King only can do it by his Prerogative. 49 *Ass. pl.* 8. *le case de* Whit-tawers. *Coke lib.* 8. *f.* 125. The Case of *London.*

In favour of Trade, the Law giveth the King Power to Erect *Guildam Mercatoriam*, a Fraternity, Society, and Incorporation of Merchants.

Every Body Politick or Corporate, be it Ecclesiastical or Lay, may commence and be established three manner of ways, *viz.* by Prescription, by Letters Patents, or by Act of Parliament; and to any of these ways is the Royal Assent, Allowance, and Approbation necessary.

The Civil Law runs thus: *Neque Societates, neque Collegium, neque hujusmodi Corpus passim omnibus*

omnibus habere conceditur. Collegia autem certa sunt, quorum corpus Constitutionibus principalibus conservatum est. D. 3. 4. 1. *Collegium, si nullo speciali privilegio subinxum sit, hereditatem capere non posse, dubium non est.* Cod. 6. 24. 8.

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15. Prerogative.

Power of dispensing with Politick Laws.

Jus dispensandi.

NO Act of Parliament can bind the King from any Prerogative, that is solely and inseparably annext to his Sacred Person, and Royal Power; but that he may dispense with it, by a *non obstante.*

2 H. 7. 6. 6. 13 H. 7. 8. b. Plowd. Com. Grendon. v. Bishop of Lincoln. 205. 6.

As for Example; It is provided by the Statute of 23 *H.* 6. *c.* 8. That all Patents made of any Office of a Sheriff for term of years, or for Life, in Fee Simple, or in Tayle, are void and of none Effect, any Clause or Word of *Non obstante*, in any wise put in such Patents to be made, notwithstanding; yet the King by his Royal Sovereign Power of Commanding, may command by his Patent to serve him and the Weal Publick, as Sheriff of such a County, for Years, or for Life, *&c.* with a Special *non obstante*, contrary to the Statute, which pretendeth to exclude *Non obstantes.*

So

So none ſhall be a Juſtice of Aſſize as appears by the Statute of 8. *R.* 2. c. 2. in the County where he was born, or did inhabit; and yet the King, with a ſpecial *Non Obſtante* may diſpenſe with this Law; For this belongs to the inſeparable Prerogative of the King, *viz.* his Power of Commandment to ſerve. 8. *R.* 2. *c.* 2.

To what I have ſaid, relating to this Prerogative, I will ſubjoyn certain Rules, whereby the Reader may the better diſcern for the Future, the true Extent and Latitude of the Kings diſpenſative Power; That is to ſay, with what he can, and with what he cannot diſpenſe. And my Rules are ſuch as theſe:

1. When an Act of Parliament is made that diſableth any Perſon, or maketh any thing void or tortious for the good of the Church or Commonwealth, in this Law all the Subjects have an Intereſt, and the King himſelf cannot diſpenſe therewith (no more than with the Common Law. As for Inſtance.

It was reſolved by Sir *Thomas Egerton* Lord Chancellor of *England*, and *Coke*, upon Conference with other Judges, upon a Queſtion referred unto them by King *James*, That one Sir *Robert Vernon* Cofferer to the King, having contracted with Sir *Arthur Ingram* for Money to aſſign his Office; and Sir *Arthur* having obtained a grant hereof from the King; It was, I ſay, reſolved that the Bargain by the Statute of 5 *Ed.* 6. *c.* 16. was void, and that

the Perſon (Sir *Arthur*,) was diſabled to take that Office, as at no time during his Life, he can have it, although it become void, by the Death of any other Officer thereof, and a new Grant be made unto him, with a *non Obſtante* of the Statute aforeſaid. *Co.* 1. *Inſt.* 234. *a. Co.* 3. *Inſt.* 154. *Cro.* 2. *part* 386. The King *v.* Biſhop of *Norwich*. *Hobarts* Reports *Roy v.* Biſhop of *Norwich f.* 75.

As the King cannot diſpenſe with the Statute of 5. *E.* 6. ſo neither can he with the Statutes, *viz.* of 3. *E.* 4. *c.* 4. of Manufactures, *Co. lib.* 11. *Monopolies f.* 8. 15. *R.* 2. *c.* 3. of the Admiral Juriſdiction *Hill.* 7. *Jac. Hiemans* Caſe. 31. *Eliz. c.* 6. of Simony *Co.* 3. *Inſt.* 154. *Co. Litt.* 120. *a. Hobart f.* 75. 5. *Eliz. c.* 1. of Knights for taking the Oath of Supremacy. *Co.* 3. *Inſt.* 154.

2. when a Statute prohibiteth any thing upon a Corporal pain, there the King may diſpenſe with the Penalty. As for Example, if any man tranſport Wool beyond Sea, to any other Place, beſides the Staple, it ſhall be Felony; In this Caſe the King may licenſe a man to do it, and he ſhall not be impeached of it, and ſo 'tis of all other like Forfeitures given to the King, 13. *H.* 7. 8. *b.* 11. *H.* 7. 12. *a. Vide Co.* 3. *Inſt. f.* 74. on the Statute of 5. *H.* 4. *c.* 4. touching Multiplication.

3. Where a Statute prohibiteth any thing upon a Penalty, and giveth the Penalty to the King, or to the King and Informer, there the King may diſpenſe with the Penalty, *Co.* 1. *Inſt.*

Inſt. 122. *a. Co. lib.* 11. the Caſe of *Monopolies* 88. *Co. lib.* 7. Penal Laws.

4. No Act of Parliament can ſo bind the King from any Prerogative that is ſolely and inſeparably annexed to his Royal Perſon and Power, but that he may diſpenſe with it, by a *Non Obſtante*, *vid.* 2. *H.* 7. 6. *b.* 13. *H.* 7. 8. *b. Plowdens Com. Grendon v. L'Eveſque de Lincolne* 502. *b. Co. lib.* 7. *Calvin's* Caſe. *Co. lib.* 12. *fol.* 18.

5 and laſt Rule is this, when Statutes are enacted to put things in ordinary Form, and to eaſe our Sovereign of Labour, thoſe Laws do not ſo deprive him of Power, but that he may diſpenſe with them; As for Inſtance the, Commiſſion of Tryal of Pyracy upon the Statute of 28 *H.* 8. *c.* 13. is good, though the Chancellor do not nominate the Commiſſioners, as that Statute appoints, 4 *Eliz. Dyer f.* 211.

The Queen made Sheriffs without the Judges, notwithſtanding the Statute of 9. *E.* 2. *Mich.* 5. *&* 6. *Eliz. Dyer* 225. *b.*

The Office of Alnage granted by the Queen without the Bill of the Treaſurer it is good with a *Non obſtante* againſt the Statute of 31 *H.* 6. *c.* 5. for theſe Statutes, and the like were made to put things in ordinary Form, and to eaſe the Sovereign of Labour, but not to deprive him of Power; and therefore the King is not reſtrained by ſuch Laws, but his Regal Authority remains full and perfect as before, and he can diſpenſe with them as King; *Mich.* 13. & 14. *Eliz. Dyer f.* 303. *b.*

for all Acts of Juſtice and Grace flow from him.

16. Prerogative.

General Laws bind not the King.

THE King in reſpect of the Dignity and Excellency of his Perſon, is not included within General Words, and therefore being not particularized in an Act of Parliament, is exempted out of it, be the Statute in the Affirmative, or Negative. As for Example:

Plow. Com. Berkley's Caſe The Statute of *Weſtm.* 2 c. 5: which gives the Plea of *Plenarty* by ſix months, doth not bind the King, becauſe the Act is General, and the King is not named.

So by the Statute of *Magna Charta*, c. 11. its provided in the Negative, That *Communia placita non ſequantur Curiam noſtram, ſed teneantur in certo aliquo loco*; but this doth not bind the King: For he may have a *Quare impedit*, in the Kings Bench; becauſe a General Act doth not extend to the King.

Cro. 1. part. Armiger v. Holland. So the King by his Prerogative, may Licenſe a New Biſhop to retain his Parſonage *in Commendam*, notwithſtanding Negative words in the Statute of 25 *H.* 8. becauſe not expreſly named therein.

Vile

Vide more of this kind of Learning, *Plowden's Com.* 240. *Berkley's Caſe.* 4 & 5 *Phil. & Mar. Dyer* 155. *a. Cro.* 3. *part. Aſcough's Caſe* in the Court of Wards.

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17. Prerogative.

Judges are bound to take notice of all Statutes that concern the King, though they be not pleaded.

IT is due by Oath, and Office to watch for him, who wakes for us, *nequid detrimenti capiat Reſpublica*; and if Charity begins at it ſelf, ſo ought Juſtice to do, That his Majeſty who granteth Juſtice to all, ſhould not be wanting to himſelf; and therefore 'tis great reaſon, that the Judges, that are Conduit-Pipes, and Conveyances of the King's Juſtice, ſhould always take Cognizance of thoſe Laws which advance our Sovereigns Intereſt, though they be not pleaded.

In proof of this Prerogative, this one Authority is offered.

Of every Act of Parliament, though the matter of it concerns Individual or particular things; yet if they touch the King, the Judges *ex officio*, ought to take Cognizance: For every Subject has an Intereſt in the King, *Co. lib.* 4. Holland's Caſe.

as

as in the Head of the Commonwealth; and if the Inferiour Members cannot eſtrange themſelves of the Actions or Paſſions of the Head, no leſs may any Subject eſtrange himſelf of any thing that concerns the King, their Supreme Head; and therefore it is, That the Law accounts all Statutes that concern the King, general Laws; and takes notice of them, though they be not pleaded.

Vide more of this Learning. *Co. lib.* 4. *Lord Cromwell's Caſe. Co lib.* 8. *Caſus Principis* 28. *a. Plowden's Com. Willion v. Berkley* 231.

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18. Prerogative.

No time, after the Law, runneth to the King.

NEither Cuſtom nor Preſcription ought to exalt its ſelf againſt the Kings Prerogative, neither can any Laws be imputed to him, becauſe it is preſumed, that his Majeſty is always imployed, about the Affairs of the Kingdom, and has not Leiſure (as Subjects have) to look after his own particular Rights and Intereſts, and therefore *vigilantibus & non dormientibus Jura ſubveniunt*, is a Rule for the Subject; but no Preſcription or Length of time, runneth unto the King, nor can bring any

any Prejudice to his Royal Rights, As for Inſtance:

Cuſtom of *London* to retain Goods pledged, till Satisfaction be made, doth not extend to the Jewels of the Crown; ſo if a man hath Toll or Wreck, or Stray by Preſcription, this extends not to the Goods of the King. 35. H. 6. 26. a. *Davys Rep.* 33. b. Caſe *de Tuniſtry.*

So if the King hath a Villain, who purchaſeth Lands in Fee, and alien them before the King enter, yet the King may enter into whoſe Hands ſoever the Lands ſhall come, becauſe *nullum tempus occurrit Regi.* *Co. Litt. Sect.* 178. 13. H. 7. 6. 9. H. 6. 21. a.

The Reader may meet with more of this kind of Learning in *Mirror cap.* 3. *Plowdens Com. f.* 243. *Co. lib.* 6. *Boſwells* Caſe *Co. Litt.* 294. *b.*

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19. Prerogative.

The King is Lord Paramount.

THE *Feudiſts* divide Lands, wherein a Perſon hath a perpetual Eſtate, into *Feudum, & Allodium*; the firſt is that which a man holds by Acknowledgment of Superiority and Attendance; the latter, defined to be Land, that one poſſeſſeth in his own Right, without any Service or Duty; this laſt is a Property in the ſuperlative Degree, which in this Kingdom *Dominus ſuper omnes.*

dom ſolely belongeth to his Majeſty, the Lord Paramount; the Fountain from whence all Lands were at firſt derived, and to which they revert upon Breach of Allegiance, as Commitment of Treaſon, *&c.*

The Authorities to be produced in Proof of this Prerogative, are theſe:

Prædium Domini Regis eſt directum dominium, cujus nullus Author eſt niſi Deus; And therefore the Poſſeſſions of the King, are called *Sacra Patrimonia*, becauſe the Kings hath no Superiour, but God Almighty.

Ca. Litt. f. 1. b.

Property is the higheſt Right that a man hath, or can have to any thing, which no way dependeth upon another mans Curteſie; and this none in this Kingdom can have in any Lands or Tenements, but only the King in the Right of his Crown, becauſe that all the Lands through the Realm, are in Nature of Fee, and hold immediately or mediately of the Crown.

Terms of Law f. 246. b.

All Lands within this Realm (ſays Sir *Edward Coke*) were originally derived from the Crown; and therefore the King is Sovereign Lord, or Lord Paramount either mediate or immediate of all, and every parcel of Land within the Realm.

Co. Litt. 65. a. 98. a. Co. 4. Inſt. 365. Co. 4. Inſt. 301, 363.

The Sovereign Lordſhip of the Emperours was thus deſcribed by *Seneca*, *Lib. 7. de Benefic. cap. 3. & 4. Omnia Rex* (ſays he) *imperio poſſidet ſinguli dominio: Ad Imperatores poteſtas omnium pertinet, ad ſingulos proprietas: In iis eſt ſuprema poteſtas, & gubernatio, non proprietas*

prietas rerum singularum. Vide Doctor Ducke *lib.* 2. *c.* 1. *un.* 6. *de Authoritate Juris civilis*, Earl of *Clarendon* in his Survey of *chap.* 24. of the Leviathan.

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20. Prerogative.

The King for the Publick Good, can deprive a Subject of his Right.

THough, since the Law of Property hath been introduced, every man may challenge this or that to be his own, yet in case of publick necessity, for the safety of the Kingdom, his Majesty may revive that pristine Right of Using things, as if they still remained in Common. All which is Founded upon the old Rule, *Salus Populi, Suprema lex est*; wherefore the Property of the Subject shall not so exclude the Royal Dominion of our Sovereign; but that he lawfully may (in cases of Necessity, for the Good of the Commonweal) use his Sovereignty, and Supereminent Dominion.

As for Example; when the Enemy comes against the Realm, to the Sea-coast, it is lawful to come upon any Land adjoyning to the same Coast, to make Trenches or Bulwarks for the defence of the Realm: for every Subject hath benefit by it; and in such cases of extremity, they may

Co. lib. 12. *f.* 12, & 13. 8 *E.* 4. 23 3 *H.* 8. 15. 21 *H.* 7. 27, *b.*

may dig for Gravel, for the making of Bulwarks; and for the Commonwealth a man shall suffer damage, as for saving a Citie, or Town, a House shall be plucked down, if the next be on Fire: And the Suburbs of a City in the time of War, for the Common Safety ty, shall be plucked down. And a thing for the Commonwealth every man may do, without being liable to an Action; and in this Case the Rule holds true, *Princeps & Respublica ex justa causa possunt Rem meam auferre.*

What the Supreme Power may do in Cases of Necessity, and Publick Danger, *Vide* Mr. *Roger Coke's* Observations on *Hugo Grotius. pag.* 48. And in his fourth Book of Justice *c.* 1. *num.* 5. Doctor *Sanderson* in his Prelection the tenth *de obligatione Conscientiæ.* How the Maxim, *Salus Populi, Suprema Lex,* is to be understood, see Doctor *Sanderson's Prelection* the tenth throughout, and the Author of that most Learned and profound Tract, Intituled *Sacro-sancta Regum Majestas: c.* 16.

21. Pro-

21. Prerogative.

Such Goods whereof no man can claim Property, do belong to the King.

THoſe things in which no man can claim Property do appertain (according to Nature) to him that is firſt occupant. Thus here in *England* of ancient Time, Wrecks and other Caſualties, as Treaſure-Trove, Waifes, Strays, and ſuch like, did belong to the firſt finder; but afterwards the Law appointed them to the King, as Sovereign and Supreme Head of the Commonwealth.

The Authorities for Proof of this Prerogative, are ſuch as theſe:

Habet Rex (ſays *Bracton*) *præ cæteris omnibus in regno ſuo, de jure gentium privilegia propria, quæ de jure naturali eſſe deberent inventoris, ſicut Theſaurus, Wrecum maris, Balena, ſturgio, waivium, quæ in nullius bonis eſſe dicuntur, ac etiam aliæ res, quæ dominum non habent, ſicut animalia vagantia quæ nullus ſequitur petit vel advocat.* Lib. 2. c. 24. nu. 1.

Fleta thus: *Theſaurus licet Inventoris erat, jam de jure gentium, Regis efficitur, & alia quædam, quæ in nullius bonis eſſe dicuntur ſicut Wrecum Maris, Balana, Sturgio, & Waivium.* Lib. 1. c. 43.

All

8 H. 4. 2. b. All Goods in *England* in which no Body has Property, are adjudged the King's by his Prerogative.

Vide more of theſe Matters in *Bracton, lib.* 3. *Tract.* 2. *c.* 3. *nu.* 4. *Fleta lib.* 1. *c.* 45.

22. Prerogative.

The King is the Sovereign Lord, and Proprietor of the Narrow Seas.

THE moſt ſerene King of Great *Britain*, is the Lord and Proprietor of the Circumfluent, and ſurrounding Sea, as an inſeparable and perpetual Appendix of the *Britiſh* Empire; He hath time out of Mind enjoyed Supreme Government and Juriſdiction, in preſcribing Laws for the Preſervation of Peace and Juſtice, in giving Rules of Navigation to ſuch as paſs through it, in exerciſing all manner of Authority in matters of Judicature, and in receiving all ſuch Profits and Commodities as are peculiar to every kind of Sea-Dominion whatſoever.

That the King has enjoyed ſeveral things in the *Britiſh* Seas, as ſpecial Signs or Pledges of Sovereignty and Dominion, ſhall be evidenced by Records, and the Marks or Signs are ſuch as theſe.

1. *Ma-*

1. *Making Laws and exercising Supreme, Naval Juriſdiction over all Perſons, and in all Caſes.*

Very many Foreign Nations, as well as the Eſtates of *England*, did in a Libel or Bill of Complaint publickly exhibited in the time of King *Edward* the Firſt, and King *Philip* the Fair, before a Court of Delegates, eſpecially in that Behalf by them appointed, in expreſs Terms acknowledge, that the King of *England* hath ever been Lord not only of this Sea, but alſo of the Iſlands placed therein *Par Raiſon du Roialme d' Angleterre*, upon the Account of the Realm of *England*, or as they were Kings of *England*, which truly (ſays our Mr. *Selden*) is all one, as in moſt expreſs Terms, to aſcribe this whole Sea unto them, as far as the Shores or Parts lying over againſt us.

Sir *Edward Coke* hath ſet down the Record it ſelf at large in *French*, which I ſhall not, (for Brevities ſake) here repeat, but only give my Reader ſome of the words thereof in *Engliſh*. *Co. 4. Inſt. f.* 142 1,43.

—— Do declare, *That the Kings of* England *by Reaſon of that Realm, time out of mind have been in peaceable Poſſeſſion of the Sovereign Dominion of the Sea of* England, *and of the Iſlands therein ſituate, by ordering and eſtabliſhing Laws, Statutes, and Countermands of Arms, and Veſſels, otherwiſe furniſhed than for merchandizing, and by taking Security, and giving Protection in*

all Cases needful; and by the ordaining of all other things, requisite for the maintaining of Peace and Right amongst all other People, as well of other Seigniories as of their own passing through the same.

The Laws Oleron which (after the *Rhodian* Laws were antiquated) have now near 500 years been received by all the Christian World for regulating Sea-Affairs, and deciding of maritime Controversies, were first declared by our King *Richard*, at his Return from the Holy Land, and by him caused to be published in the Isle of *Oleron*, as belonging to the Dutchy of *Aquitain*.

Co. 4. Inst. 144.

To these let me add the Recognition or Acknowledgment of Sea-Dominion of the Kings of *England*, made by the *Flemings* in an Embassy to our King *Edward* the Second; when as the Ambassadors of *Robert* Earl of *Flanders*, complaining of the taking of their Goods at Sea, imploring Remedy of the King of *England*; they said more than once, that they were taken upon the *English* Sea, towards the Parts about *Crauden*, within the Power of the King of *England*, and brought into *England*; but that it appertained to the King of *England*, to take Cognisance of the Crime, *For that he is Lord of the said Sea, and the aforesaid Depredation was committed upon the aforesaid Sea within his Territory and Jurisdiction*; *which are the Words of the Record.*

Rot. pat. 14. *Ed.* 2. *part.* 2. *Membran.* 26. *in dorso.*

2. *Grant-*

2. *Granting Licenſe or Liberty to Foreigners to fiſh in the* Britiſh *Seas.*

We find that a Liberty of Fiſhing hath been obtained by Petition from the Kings of *England.*

There is a clear Teſtimony hereof in that which is alledged in a Record of the 2 *R.* 2. concerning thoſe Tributes or Cuſtoms, that were impoſed in this Kings Reign upon all Perſons whatſoever, that uſed Fiſhing in the Sea. The Words of Record are theſe in our *Engliſh* Idiome. *Rot. Parl. 2. R. 2. part. 2. Art. 38. in Schedula.*

Item, *To take of every Fiſher-boat that fiſheth upon the Sea of the ſaid Admiralty for Herrings, of what Burthen ſoever it be, for each Week of every Tun ſix pence.*

Moreover, it appears by a Record of King *H.* 6. that he gave Leave particularly to the *French*, and very many other Foreigners, for one whole year only (ſometimes for ſix Months) &c. *to go and fiſh throughout the Seas at all times, and as often*, &c. But this Leave was granted under the name even of a Paſſport or ſafe Conduct; yea and a Proportion was preſcribed to their Boats, that they ſhould not be above 300 Tuns. *Rot. Franciæ 38. H. 6. Membran. 9. & 14.*

I have been informed, that Licenſes to fiſh in the *Britiſh* Seas have been granted by *H.* 6. to the Dutcheſs of *Burgundy*; to thoſe of *Brabant* by *E.* 4 to *Philip* King of *Spain* by Queen *Mary*, for the Hollanders to fiſh upon

the *North* Coasts of *Ireland*, for the Term of 21 years, paying yearly for the same 1060 *l.* which was accordingly paid into the Exchequer of *Ireland*.

Lib. 2. *c.* 21. Of the Dominion of the Sea.

Moreover also, in our time (says the famous Antiquary Mr. *Selden*) Leave was wont to be asked of our Admiral, for the *Frenchmen* to Fish for *Soales* in the Neighbouring Sea, for King *H.* 4. of *France* his own Table; as it is affirmed by such who have been Judges of our Admiralty, and Commanders at Sea of an ancient Standing; yea, and that the Ships of those *French* were seized, as Trespassers upon the Sea, who presumed to Fish without this kind of License.

Mr. *Cambden* in his Discourse of *Yorkshire* saith, That no Stranger durst let fall a Net into Sea, till he had obtained Leave of *Scarborough* Castle.

6to Maii Anno Domini 1609.

In the seventh year of the Reign of King *James*, this Right was asserted by Proclamation, and all Persons excluded from the Use of the Seas upon our Coasts, without particular License; the Grounds whereof you may see in the Proclamation it self.

But it may be demanded, whether other Princes have such Right of receiving Tribute for Fishing, and other Matters in other Seas?

It is answered, That they have, and do at this day receive Tribute of Strangers. At *Coole*, the Emperour of *Russia*; at *Wardlings* and *Sound*, the King of *Denmark*; at *Shotland* Islands, the King of *Sweden*; all the Princes

Princes of *Italy*, Bordering upon the Seas; the like; as the *Venetians* in the *Adriatique* Sea; the *Genoueſes*, in the *Liguſtique*; the *Tuſcans*, in the *Tyrrhene*; the Pope, in that which is called the *Churches Sea*.

3. *Granting Licenſes of Safe Conduct to Strangers.*

Strangers (by the Law and Cuſtom of the *British* Seas) either in coming to *England*, or going to any other Place (without ſo much as touching upon any of his Majeſties Dominions) have uſed to take Safe Conducts, and Licenſes of the Kings of *England*, to ſecure, and protect them in their Voyage or Paſſage; whereof we have clear Teſtimonies in Records.

Our *Henry* the Fourth granted Leave to *Ferrando Urtis de Sarachione*, a *Spaniard*, *to Sail freely from the Port of* London, *through our Kingdoms, Dominions, and Juriſdictions, to the Town of* Rochel. *Rot. Franciæ. 5 H. 4. membr. 11.*

It is manifeſt (ſays *Selden*) that in this place, our Dominions and Juriſdictions, do relate to the Sea flowing between.

When *Charles* the Sixth, King of *France*, ſent Ambaſſadors to *Robert* the Third King of *Scots*, to treat about the making of a League; they upon Requeſt made to *H.* 4. obtained Paſſ-ports for their ſafe Paſſage and *Præter-Navigation*, *Par touz nos povoirs, deſtrois et ſigniories, per Mere, et per Terre*, That is, through all places under our Power, Territories and Dominions, as well by Sea as by Land. *5 H. 4. Membr. 14.*

It is (ſays *Selden*) worthy of Obſervation, That theſe kind of Letters for Safe Conduct and Paſſage, were uſually Superſcribed and directed by our Kings to their Governours of the Sea, Admirals, Vice-admirals, Sea-Captains; to wit, the Commanders appointed by the King, to take off his Territories Sea, whereas notwithſtanding, we find no mention at all of any ſuch Commanders in thoſe Paſs-ports of that kind, which were granted heretofore by the *French* King, to the King of *England*, when he was to croſs over into *France*. Letters of that kind were given to our *Edward* the Second, by King *Philip* the Long, Superſcribed only thus: *Philip by the Grace of God King of* France; *To our Judges and Subjects Greeting*. But the Reaſon is evident, why the King of *England* was wont to direct his Letters to his Commanders of the Sea, and the *French* King at that time only to his Judges, and Subjects in general. To wit, becauſe the King of *England* had his Sea-Commanders throughout this whole Sea, as Lord of the ſame; and therefore when he croſt over, it was not reaſonable that the *French* King ſhould ſecure him by Sea, it being within the Bounds of the *Engliſh* Territories. To theſe Authorities, I ſhall add but one more, which is this; *John* King of *Sweden*, in that Letter of his ſent to Queen *Elizabeth* in the year 1587. deſired Leave for *Olavus Wormæus* a *Swede*, to carry Merchandiſe into *Spain*, acknowledging

Rot. Clauſ. 13 Ed. 2. numb. 7. in dorſo.

ing that he muſt of Neceſſity *Maritima Reginæ ditiones pertranſire, paſs through the Sea-dominions of the Queen*, which are the very words of the Letter, in Sir *Robert Cottons* Library.

Theſe forementioned Authorities do ſufficiently aſſert on the Behalf of the Kings of *England*, the Dominion and Poſſeſſion of the Sea, from that Leave of Preter-navigation or Paſſage, which hath been granted by them to Foreigners.

4. *Impoſing and receiving Tributes or Cuſtoms, for the Guard of the* Engliſh *Sea.*

Concerning the Tributes or Cuſtoms that were wont to be impoſed, paid and demanded for the Guard and Protection of the *Engliſh* Sea, there are very many ample, ancient Teſtimonies all along ſince the Reign of the *Normans*; but I ſhall content my ſelf with one or two.

It is manifeſt, That the Tribute impoſed in the time of the *Engliſh Saxons*, for the Guard of the Sea, which was called *Danegeldt*, was wont now and then to be paid heretofore under the *Norman* Kings.

It was paid in the Reigns of *William* 1. *William* 2. *H.* 1. and King *Stephen* alſo. And *Roger Hoveden* ſaith expreſsly, that it was uſually paid, untill the time of King *Stephen*. *Annal. Parl.* 1. *p.* 276.

Rot. Parl. 2. R. 2. part 2. Art. 38. in Schedulâ.

In the Parliamentary Records of King *R.* 2. we find that a Tribute or Cuſtom was impoſed upon every Ship that paſſed through the Northern Admiralty (that is, in the Sea ſtretching it ſelf from the *Thames* mouth, all along the Eaſtern Shore of *England*, towards the North-Eaſt,) for the Pay and Maintenance of the Guard, or Protection of the Sea; nor was it impoſed only upon the Ships of ſuch Merchants as were *Engliſh*, but alſo by the ſame Right in a manner upon thoſe of any Foreigners whatſoever, no otherwiſe than if a man that is Owner of a Field, ſhould impoſe an annual Rent for the Liberty of Thorowfare, or driving of Cattel, or Cart through his Field. Payment was made at the Rate of ſix pence a Tun, upon every Veſſel that paſſed by.

Vide more of theſe Matters in Mr. *Selden*'s *Mare Clauſum*, *lib.* 2. *c.* 15.

5. *Preſcribing Limits to Foreigners that are at Enmity with each other.*

Another Evidence of the Sea-Dominion of Great *Britain* is drawn from the Laws and Limits uſually ſet by our Kings in the Sea, to ſuch Foreigners as were at Enmity with each other, but in Amity with the *Engliſh*.

About the Beginning of the Reign of *James* King of *England*, the Reſt of the Chriſtian World was every where at Peace, but the War waxed hot betwixt the Spaniard and the

the States of the United Provinces and thereby it hapned, that both thoſe Parties, being in Amity with the *Engliſh*, did infeſt one another with mutual and very frequent Depredations in the *Engliſh* Sea, touching the Lawfulneſs whereof divers Queſtions aroſe amongſt the Kings Officers, in the Court of Admiralty; our King following the Examples of his Predeceſſors, did as lawful Sovereign, and Moderatour of the Seas, ſet forth a Proclamation, appointing certain Limits upon the *Engliſh* Coaſts, within which he ordained there ſhould be ſafe riding for both Parties, with ſafe Paſſage; yea, and declared that he would give equal Protection to both in ſuch manner, that within theſe Limits, neither might the *Spaniards* uſe any Hoſtility againſt the United *Netherlands*, nor thoſe againſt them, nor the Subjects of any Nation whatſoever againſt thoſe of another, without incurring his Diſpleaſure.

Procl. 1. *Martis* 2. *Jac. an.* 1604. *in Rot. Pat. Jac. Regis part* 32.

Vide more *Selden*'s *Mare Clauſum lib.* 2. *c.* 22.

6. The ſtriking of the Top-ſails, by every Ship of any Foreign Nation whatſoever, if they ſail near the Kings Ships.

It is affirmed, by all that are uſed to the Seas, as a thing indiſputable, that this Intervenient Law, or Cuſtom of ſtriking Sail hath been very uſual to the *Engliſh* and other Nations; and that it is very ancient, and received for

for above 400 years, appears by this; That at *Haſtings*, a Town ſituate upon the Shore of *Suſſex*, it was decreed by King *John* (in the ſecond year of his Reign, or of our Lord *MCC*) with the Aſſent of the Peers; That if the Governour or Commander of the Kings Navy, in his naval Expeditions *ſhall meet any Ships whatſoever by Sea, either Laden or Empty, that ſhall refuſe to ſtrike their Sails at the Command of the Kings Governour, or Admiral, or his Lieutenant, but make Reſiſtance againſt them which belong to the Fleet; That then they are to be reputed Enemies if they may be taken, yea, and their Ships and Goods be confiſcated as the Goods of Enemies. And that, though the Maſters or Owners of the Ships ſhall alledge afterwards, that the ſame Ships and Goods do belong to the Friends and Allies of our Lord the King. But that the Perſons which ſhall be found in this kind of Ships, are to be puniſhed with Impriſonment at Diſcretion for their Rebellion.*

It was accounted Treaſon (ſays our *Selden*) if any Ship whatſoever had not acknowledged the Dominion of the King of *England* in his own Sea, by ſtriking Sail.

To be ſhort, That the Striking of Sails is done, not only in Honour of the *Engliſh* King, but alſo in an humble Recognition and Acknowledgment of his Sovereignty and Dominion in the *Britiſh* Seas, is preſumed a thing out of Queſtion. Sure the *French* cannot doubt of it, who by ſuch a kind of Striking, would have had themſelves heretofore acknowledged

Lords

Lords of our Sea, but in Vain; that is to ſay, they were much overſeen in the former Age, in ſetting forth two Edicts, or Ordinances, to acquire and ratifie ſuch a kind of ſtriking Sail to themſelves by all Foreigners, as they were in ſo raſhly challenging the Sea-dominion of the King of *England*.

Vide Edicts in Mr. *Selden's Mare Clauſum Lib.* 1. *c.* 18. *& lib.* 2. *c.* 26.

To theſe four ſpecial Marks of Sea-Dominion, I will add the Teſtimonies in our Law-Books, and the moſt received Cuſtoms whereby the Sea-Dominion of the King of *England*, is either aſſerted or admitted.

It muſt be acknowledged by me, that ſome of the ancient Authors of our Law, after they had read through the Civil Law alſo, were ſo ſtrict, in following thoſe Determinations Word for Word, which they found concerning the Sea in that Law, that when they treated *de Acquirendo Rerum Dominio*, of the manner of acquiring the Dominion of things, they transferred them into their own Writings. From thence it is, that Mr. *Bracton* ſaith, *Lib.* 1. *de rerum diviſione c.* 12. *nu.* 5. *&* 6. *By the Law of Nature all theſe things are common, running Water, the Air and the Sea, and the Shores of the Sea as Acceſſories or Dependants of the Sea. Alſo if Buildings be raiſed in the Sea, or upon the Shore, they become theirs that build them by the Law of Nations*; And a little after, *A Right of Fiſhing is common to all in Haven, and in Rivers.* But this very Man after-

afterwards *lib.* 2. *c.* 24. *nu.* 2. *&* 5. *f.* 56, *&* 57, ſays, That by the Kings Grace and Favour, *Were exempted from paying Tolls and Cuſtoms, throughout the whole Kingdom of* England *in the Land, and in the Sea, and throughout the whole Kingdom both by Land and by Sea.*

Rot. Pat. 51. *H.* 3. *membr.* 11. A Freedom was granted from ſome Payments to the Citizens of *London, throughout the whole Kingdom, as well by Sea as by Land.*

Of Purpreſtures (ſays *Bracton*) made upon our Lord the King either on Land or on the Sea, or in ſweet Waters, either within the Liberties or without, or in any place whatſoever; by which words of *Bracton* is recognized the Dominion of the Sea to be as much the Right of the King, as the Land.

Robert Belknap, one of *R.* 2. his Judges tells us, that the Sea is Subject to the King, as a part of his *Engliſh* Kingdom, or of the Patrimony of the Crown. His Words in the *Norman* Tongue run thus; *La Mere eſt del Ligeans del Roy, come de ſon Corone d' Angleterre.* He addeth to his Words (ſays *Selden*) in a remarkable way, *as belonging to the Crown of* England, or as *belonging to the Royal Patrimony of* England, to the end that no man might queſtion, whether the Sea belonged to the King by the Right of the Kingdom of *England*, or of the Dutchy of *Normandy*, or of any other Province in *France.*

St. German *in his Doct. & Stud. lib.* 2. *c.* 51. Another alſo, that wrote in the Reign of *H.* 8. ſaith, that 'tis a Duty lying upon the King of *England*, as Lord of the *Britiſh* Sea,

to

to ſcour the Sea of Pyrates, and to render the Uſe thereof, as of a publick Road, ſafe for Shipping.

To Conclude; upon the Authorities that I have here produced, to prove his Majeſties Sea-Dominion, was grounded the Declaration of our laſt Long Parliament *Anno* 16 & 17 *Car.* 2. *nunc Regis*, which was in the Preamble of their Act thus: That the equipping and ſetting out to Sea of a Royal Navy, is for the Preſervation of his Majeſties Ancient and undoubted Sovereignty in the Seas.

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23. Prerogative.

The King is Sole Lord of all Navigable Rivers.

THough the King permits his Subjects, for their Eaſe and Conveniency, to have Common paſſage upon all Navigable Rivers; yet he hath as well the Sole Intereſt, Soil, Ground and Piſchary, as the care to redreſs all Nuſances and Obſtructions in ſuch ſtreams that are any Impediment to Navigation and Paſſage, to and from the Seas.

In Proof of this Prerogative, theſe Authorities are producible:

It

Dyer 117. *a.* It is found by Commiſſion, that the River of *Lee*, which runneth from *Ware* to *Waltham*, and to *London*, is the High Stream of the King.

Co. Lib. 7. *le Caſe de Swanns* *H.* 8. Granted to Strange-ways, *Totam Libertatem Piſcariam*, called the Fleet in *Abbots-bury*, which is a Bay, or Creek in the Sea.

The Commiſſion of Sewers, that was awarded by the King, by virtue of his Prerogative Royal, before any Statute made in ſuch caſes, extends not only to the Walls, and Banks of the Sea, but alſo to Navigable Rivers. And it is recited in the Statute of 25 *H.* 8. *c.* 10. That the King, by reaſon of his Dignity and Prerogative Royal, ought to provide, that Navigable Streams be made paſſable.

25 *H.* 8. *c.* 10.

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24. Prerogative.

Chief Lord of all Ports and Havens.

THE King, by Virtue of his Prerogative Royal, hath the Cuſtody of the Havens, and Ports of this Iſland, being the very Gates of the Kingdom. He only in his Royal Function, is truſted with the Keys of theſe

theſe Gates; He alone therefore, hath Power to ſhut and to open them, when, and to whom, he in his Princely Wiſdom ſhall ſee good.

The King (ſays Sir *John Davys*) is Guardian of all the Ports and Havens of the Realm, which are *Oſtia ſeu Januæ Regni*; and therefore the King is *Cuſtos totius Regni*. He ought of Right to ſave and Defend his Realm, as well againſt the Sea, as againſt the Enemies. Davy's Reports *Le Caſe de Cuſtoms. f. 9. b. Le Caſe del Royal Peſchary. 56.*

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25. Prerogative.

Power of Granting Letters of Marque and Repriſal.

THis Privilege is incident to the Imperial Crown of *England*, for the Advancement of Trade and Commerce; and therefore, if an *Engliſh* Merchant happen to be injuriouſly deprived of his Goods by Foreigners, and cannot obtain Juſtice abroad, the King can Grant Letters of Marque or Reprizal to the Party thus wronged, to redreſs himſelf out of the Merchandiſes of any Subject of that Countrey, to which the Deſpoilers do belong.

The Authority for proof of this Prerogative is this: The

Co. 2. Inſt. f. 205. on Weſt. 1. c. 23.

The Law of Marque in ſome Records, is called *Jus Regium*, becauſe thereby the King doth his Lieges Right: As in the Parliament holden in 11 *H.* 4. *John Cowley* of *Bridgwater*, in his Petition, prayed the King that he might take Marque or Reprizal of all *French* Goods (having no ſafe Conduct of the King) to a certain Value, for certain his Ships and other Goods taken by the *French*, in the time of the Truce. The Anſwer of the King was, that upon Suit made to the King, he ſhould have ſuch Letters Requiſitory as are needful, and if the *French* King refuſe do do him Right, the King will then ſhew his Right.

Vide more, touching Letters of Marque. 27 *E.* 3. *c.* 17. 4 *H.* 5. *c.* 7.

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26. *Prerogative.*

Power of Granting Licenſes to go beyond the Seas.

Jus peregrinandi.

THough by the Law of Nature every man hath his Liberty to leave his Native Country, and to go whither he liſt; yet the rule of Natural Equity is to be obſerved with us, as heretofore amongſt the *Romans*, *viz.* *That it is not lawful, if prejudicial to the Publick*

lick Intereſt, according to the Saying of *Proculus*, *Non id quod privatim intereſt unius ex ſociis ſervare ſolet, ſed quod ſocietati expedit.*

The Authorities produced in proof of this Prerogative are theſe:

Britton perſonating the King, ſpeaks thus *Nul grand Seignior, ne Chivalier de noſtre Realm, ne doit prender, chemin ſans conge noſtre, car iſſint poet le Realme remainer diſgarnie de forte Gent.* *c.* 123. *Co. Lit.* 130. *b.*

In the tenth year of *H.* 2. it was declared, That it is not lawful for any Arch-Biſhops, Biſhops, and other perſons to depart out of the Realm without the King's leave; which although they have obtained, yet were notwithſtanding to ſecure the King, neither in their going, or returning, or ſtaying, to practiſe any thing prejudicious to his State or Perſon. *Co.* 3. *Inſt.* 178.

If the King ſends a Special Command, under the Privy Seal or Great Seal, to any of thoſe that are in *partibus tranſmarinis*, and which parted out of the Realm without Licenſe, that they return into the Realm by a day certain, under a penalty, *&c.* And if they refuſe to come, their Lands and Chattels ſhall be ſeized to the Uſe of the King for the Contempt. *Dyer.* 128. *b.*

The Civil Law joyns hands with our Law in this point of Prerogative; *Edixit omnibus Senatoribus* (ſays *Dion* of *Auguſtus*) *nequis eorum peregrinaretur extra Italiam injuſſu ſuo.*

27. Prerogative.

Power of Granting Liberties and Franchiſes.

Jus privilegiorum Concedendorum.

THoſe things that we term Royal Priviledges, Liberties and Fanchiſes, as Hundreds, Leets, Wrecks, Waiſes, Strays, Fairs, Markets, Park, Warren, Deodans, Conuſance of Pleas, and the like, may be (though appendant to the Crown) ſeparated from it, and transferred to the Subject, by the ſpecial Grace of his Majeſty, from whom, and his Royal Predeceſſors, Kings and Queens of *England*, all thoſe fore-mentioned Liberties, with divers others, now in the hands of Subjects, were at firſt derived.

In Proof of this ſame Prerogative, theſe Authorities are offered:

Bracton *lib.* 2. *c.* 24. *num.* 2. *Ea quæ dicuntur privilegia Licèt pertineant ad Coronam tamen à Corona ſeparari poſſunt & ad privatas perſonas transferri, ſed de gratia ipſius Regis ſpeciali.*

39 *H.* 6. 40. *a.* The King can grant to a man a Charter of Exemption, that he ſhall not be put on Juries.

Co. lib. 12. the Preſident and Council of the *North.* The King by his Letters Patents, can grant to ſuch a Corporation, in ſuch a Town, *Tenere Placita realia perſonalia & mixta.*

The

It is not lawful for any man to erect a Park, Chaſe, or Warren, without a ſpecial Licenſe from the King, who is *Pater patriæ*, and Head of the Commonwealth. *Co. Lib.* 11. 87.

In hoc Rex Anglorum (ſays *Cowel*) *legibus eſt Superior, quod Privilegia pro arbitrio ſuo, dum tertio non injurioſa, perſonis ſingulis vel etiam municipiis aut collegiis concedere poſſit.* *Caſe de Monopolies Co.* 2. *Inſt.* 190. *Inſt.* 1. 2. 5.

28. Prerogative.

To the King belongs the Cuſtody of Idiots *and* Lunaticks.

IF we look into the Laws of Nature, we ſhall find that none are capable of Dominion, but thoſe that have the Exerciſe of Ratiocination, however humane Laws, have introduced in Favour of *Idiots*, *Lunaticks* and the like; that they ſhall be capable to have and enjoy, though not to order and diſpoſe of their Properties; the latter of theſe belongs unto the King, who hath the ſupreme Care of all his Subjects, to defend their Perſons and Eſtates, from all manner of Violence, Uſurpation and Oppreſſion, much more the Properties and *Cura amentium.*

Perſons of thoſe that are natural Fools and Madmen.

In Proof of this Prerogative take theſe Authorities:

17 E. 2. c. 9. & 10. The King by his Prerogative, ſhall have the Cuſtody of the Lands of *Idiots* and *Lunaticks*.

Hob. Rep. Colt. and Glover verſus Biſhop of Coventry and Litchfield 155. The Eſtates and Perſons of *Idiots* and *Lunaticks*, are by the Law, intruſted to the King.

Co. Litt. 247. *a.* If an *Idiot* (ſays *Coke*) make a Feoffment in Fee, he ſhall in pleading never avoid it, by ſaying that he was an *Idiot*, at the time of the Feoffment, and ſo hath been from his Nativity, but upon an Office found, the King ſhall avoid the Feoffment for the Benefit of the *Idiot*, whoſe Cuſtody the Law giveth to the King.

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29. Prerogative.

To a thing that may be of Profit to the Common People, the King can charge them, without Aſſent of the Commons.

THough the King (whoſe Authority over his Subjects is not only Royal but Politick) can neither change Laws, nor charge his Subjects with Subſidies, *&c.* without their Con-

Conſent, yet his Majeſty can charge them at his Pleaſure, with ſuch things as may be of Profit and Benefit to the Common People.

As for Inſtance:

The King may for the Benefit of the Subject, make an Impoſition or Toll, within the Realm, to repair Highways, Bridges, and to make Walls for Defence. *Co. lib.* 12. *f.* 33. *Le caſe de cuſtoms.* 13 *H.* 4. 14. *b.*

The King may grant a Fair, and that Toll ſhall be paid, although it be a Charge upon the Subject, becauſe his Subjects have Benefit and Eaſe by ſuch Fairs. *Cro.* 1 *part* Heddy. *v.* Wheeler. 559.

Vide more 40. *E.* 3. 17. *b.* 18. *a.* 13. *H.* 4. 14. *b.*

30. Prerogative.

Nothing that is incident to the Crown ſhall paſs from it, without Expreſs and Determinate Words.

TO make men watchful in their Affairs, and to put a period to many Queſtions, about the Conſtruction of Words. It is moſt agreeable to reaſon, That every Mans words ſhould be taken ſtrongeſt againſt himſelf; but this Rule hath its Exception in reference to the King, whoſe words ſhall always be ta-

ken most advantagious for himself; because the King is the Sole Conservator of the Law, which is the Commonwealth: and for that he is the Supreme Head thereof, the Law hath a more favourable Eye to his Rights, and will not permit any of them to pass from the Crown without Express and Determinate Words. As for Example:

2 *H.* 7. 7 *a.* If the King grant all Amerciaments, Royal Amerciaments do not pass.

Co. 2. Inst. 542. The Fine *pur Conge d' accorder*, doth belong to the King, in so high a degree of Prerogative, that it passes not by his general Grant of all Fines.

Co. lib. 1. Alton-wood's Case. It is adjudged, that by the Grant of all Mines in such a Soil, although that the Grant be *ex certa scientia & mero motu*, Mines Royal of Gold and Silver shall not pass; but the Words [*Soil* and *Mines*] shall be taken in a Common sence, and to a Common Intent; but to have them pass from the King, they ought to have special Words.

Davy's Reports *le case de Customs. f.* 17.

8 *H.* 4. 2. The King grants to me the Chattels of Felons and Fugitives; for what offences soever, I shall not have the Goods of one that stands mute: for these are Forfeits for Contempt, and this Grant shall be taken strictly, because it ruleth upon the King's Prerogative.

31. Prerogative.

Power of Denizating Aliens.

THE Law eſteemeth Denizating of Aliens a point of high Prerogative, annexing it individually to the Sacred Perſon of the King, who by virtue of this Royal Preheminence, can make Letters of Denization, to whom, and how many he pleaſeth, enabling them to ſue in any Action Real or Perſonal, and can make them capable of enjoying the Laws, Liberties, and Inheritances of this Realm, in ſuch ſort, as any natural born Subject. *Jus denizandi.*

In proof of this Prerogative, theſe Authorities are offered:

A Denizen is one that is Infranchiſed by the Kings Letters Patents, whereby the King doth grant unto him, *Quod ille in omnibus teneatur, reputetur, habeatur, teneatur, & gubernetur, tanquam ligeus noſter infra dictum Regnum noſtrum Angliæ oriundus, & non aliter, nec alio modo.* 9 E. 4. 8. a. Co. Lit. 129. a. Plowd. Com. Berkley v. Thomas. 130. b.

The King may make a particular Denization, as he may grant to an Alien, *Quod in quibuſdam Curiis ſuis Angliæ, audiatur ut Anglicus,* Co. Lit. 129. a.

& quod non repellatur per illam exceptionem quod sit Alienigena. & natus in partibus, transmarinis, to enable him to sue only.

Co. Litt. f. 274. b. The King can denizate an Alien for Life, in Tail, or upon Condition subsequent or precedent.

Civil Law: *Antoninus pius multis è peregrinis Jus Romanæ Civitatis dedit.* Those that were *N. 78. 5.* Aliens of another Nation, were received into the *Roman* Album, made Citizens of *Rome.*

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32. Prerogative.

Right of Tribute.

Jus Vectigalium. TRibute is only due to him, in whom resides the Superiority Majestatical, and therefore a Prohibition to pay it to *Cæsar*, is an Usurpation on Sovereign Power; and if there be a Refusal to render it, 'tis an Affront to God, and a Violation of humane Laws; for Tribute and Customs are due to his Majesty by the Law of God, the Law of Nations, and by the Laws of the Realm.

1. *By the Law of God.*

St. *Paul* speaking of the higher Powers, enjoyneth Subjects, to render to all their Dues, Tri-

Tribute to whom Tribute, Custom to whom Custom, and this Injunction is grounded upon good Authority; for we find that our Blessed Saviour himself taught, That we are to render to *Cæsar* the things that are *Cæsar*'s. *Rom. c.* 13. *v.* 7. *Mat. c.* 22. *v.* 2. *Mar. c.* 12. *v.* 17.

2. *By the Law of Nations.*

Cicero in his Epistles tells us, That *Imperium sine vectigalibus nullo modo esse potest Neque Quies* (says *Tacitus*) *gentium sine Armis, neque Arma sine stipendiis, neque stipendia sine Tributis habere queunt.*

3. *By the Laws of the Realm.*

It is (says *Plowden* in his Commentaries) the Office of the King, to preserve his Subjects in Peace, and their Preservation doth consist, in the due Execution of the Laws, and in Armour to defend them against all Hostility; Now Armour cannot be had, nor Justice maintained without Treasure, and no Treasure without Tribute and Customs; hence it is, that in all Cases where the King is put to Expences, in Discharge of his Royal Office, for the Protection of the Subject; the Law yieldeth out of the thing protected some Profit towards the Maintenance of that Charge, as for the Upholding of Courts of Justice, the Law giveth the King Fines, and the like; for the Safety of Merchants upon the Seas, Customs, Prisage, Butlerage, Tunnage and Poundage, are *Plowd. Com. Le Case de Mines.*

are to the King always allow'd to wage War with a Foreign Enemy, and to ſuppreſs Rebellion, and Inſurrections at Home; the King in Parliament may levy Aids and Subſidies, but without the Royal Aſſent and Authority, the Order of both or either Houſes of Parliament for the levying of Taxes, are againſt the Fundamental Laws of the Kingdom, and ſo 'tis declared in an Act made in the thirteenth Year of our Sovereign Lord the King that now is.

13. Car. 2. *anno Regis, cap.* 1.

Agreeable to this are the Rules of the Imperial Law.

Vectigalia ſine Imperatorum præcepto, neque Præſidi, neque Curatori, neque Curiæ conſtituere nec precedentia reformare, & his vel addere vel diminuere licet.

Siquis Vectigalia imponere, abſque illius Licentia auſus fuerit, Judicio Civili coerceatur.

C. 4. 62. 3. *Non ſolent nova vectigalia, inconſultis principibus, inſtitui, ergo & exigi aliquid, quod illicite poſſideatur, Competens Judex vetabit & id quod exactum videtur, ſi contra Juris Rationem extortum eſt, reſtitui Jubebit.*

33. Pre-

33. Prerogative.

To the King the highest and most eminent Love, Legiance and Reverence of all kind is due.

TO Obey, Revere, and Love our Prince, we are bound by the Laws of God and Man; Disloyalty is an Affront to the Highest, who hath delegated Sovereign Power to Kings and Princes; for this Cause *Solomon* adviseth us, to keep the Kings Commandment, and that, says he, in Regard of the Oath of God; but those Subjects that have not taken the Oath of Allegiance are as much bound, as if they had, Legiance being connatural, written by the Pen of Nature in the Heart of every Subject; it is therefore indelible, * *It cannot be forfeited, removed nor circumscribed within the four Seas:* but Subjects shall have Obligations upon them of Duty and Loyalty in what part soever of the World they shall inhabit, and as their Love and Legiance flows from Nature, so it ought to be in the highest

Jus summæ fidelitatis. *Honora Patrem*, is a Precept of the Moral Law, which doubtless doth extend to him that is *Pater Patriæ. Co. lib. 7. Calvin's Case. Principi summi rerum arbitrium Dii dederunt, subditis obsequii gloria relicta est.* Tacitus.

Co. 2. Inst. on the Stat. of *Marleb. c. 10.*

* *Co. lib. 7.* Calvin's Case, *Ligantia naturalis nullis Claustris coercetur, nullis metis refrænatur, nullis finibus premitur Vide Co. Litt. 129. a. 13. Eliz. Dyer 300 b.* Dr. Story's Case. *Cod. 10. 38. 4. D. 50. 1. 6.*

De-

Degree of Affection, beyond all other Relations, yea Life it ſelf; for the publick Concerns were ever by Loyal Hearts preferred before any private Intereſt; and therefore unto us, he neceſſarily muſt be dearer, from whom floweth the whole Unity, and Univerſal Weal of the Realm. His Moſt Excellent Majeſty being the Pillar * that ſupports, the Star that guides the Ship of the Commonwealth, the *Spiritus Vitalis* by which we ſubſiſt: For on his Life depends the Laws the Liberties, the Properties, together with the Glory of the *Engliſh* Nation.

* *Alexander* in *Curtius* is called *Macedonia Columen & Sydus.*

(*a*) That it is our Duty, appears by the law of Nature, the law of God, and the Laws of the Realm.

To ſtudy therefore the Preſervation of the King's Perſon, to defend to the uttermoſt his Crown and Dignity, againſt all Violators of Royal Majeſty, Self-Love (if not (*a*) Bounden Duty) ſhould prompt all Subjects whatſoever.

1. By the Law of Nature; *Seneca* of the Emperour, *Somnum ejus nocturnis excubiis muniunt, circumfuſique defendant, incurrentibus periculis ſe opponunt: nec hæc vilitas ſui eſt, aut dementia, pro uno Capite tot millia accipere ferrum, ac multis mortibus unam animam redimere, &c. Plutarc. Primum virtutis opus eſt, ſervare ſervantem cætera.* 2. It appears in the Laws of God. 2 *Sam. c.* 21. *v.* 16, 17. *Cap.* 23. *v.* 15, 16. *Cap.* 18. *v.* 3. 3. In our Law, it is our Duty, as appears in 11 *H.* 7. *c.* 1, 18. & 19 *H.* 7. *c.* 1. *Co. lib.* 7. *Calvin's Caſe. Co. Lit. fol.* 69. *b.* And in the Statutes of 1 *Eliz. c.* 3. and 1 *Jac. c.* 1. The Lords and Commons in Parliament promiſed to aſſiſt and defend the Royal Majeſty, with expence of Lives and Fortunes.

The Authorities offered in Proof of this Prerogative are theſe:

In

In doing of Homage to any Subject, this Clauſe always ought to be added (*Salve le foy, que jeo doy a noſtre Seignior le Roy*) both becauſe there is (ſays Sir *Edward Coke*) *Homagium Ligeum*, which is due to the King, only, and alſo becauſe he is Sovereign Lord over all. *Lit. Sect.* 85,86,87.

The reaſon wherefore the Tenant is not ſworn in doing his Homage to his Lord, is, for that no Subject is ſworn to another Subject, to become his man of Life, and Member; but to the King only, and that is called the Oath of Allegiance. *Co. Lit.* 68. *b.*

Where the King is Party, one ſhall not challenge the Array for favour, *&c.* becauſe in reſpect of his Allegiance, he ought to favour the King more. *Co. Lit.* 156. *a.* 4 *H.* 7. *a.*

To the King (ſays *Coke*) the higheſt and moſt eminent Honour, Ligeance, and Reverence of all Kind is due. *Co. Lit.* 64. *b.*

To this Prerogative, both *Cicero* and *Seneca* give their Atteſtation.

The former thus; *Eſt antiquior* (*a*) *parens quam is, qui, ut aiunt, creaverit majori profectio quam parenti debetur gratia.*

(*a*) The King is *Pater Patriæ.*

The latter ſo, *Princeps Regeſque & quicunque alio nomine ſunt Tutores ſtatus publici, non eſt, mirum amari ultra privatas neceſſitudines, nam ſi ſanis hominibus, publica privatis potiora ſunt, ſequitur ut is quoque charior ſit, in quem Reſpublica convertit.*

34. Pre-

34. and last Prerogative.

Jus Supplicationum.

BEing informed sufficiently, that we are bound by our Natural Ligeance, to obey and serve our Sovereign Lord the King, we may, I suppose, be easily perswaded, that it is our duty likewise to make Prayers and Supplications to God, for a Blessing upon the Sacred Person and Government of his Majesty, to whom we owe, under God, all the Peace, Liberty, Justice, Property and Prosperity we have enjoyed, since his Majesties happy Restauration to the Actual Possession and Exercise of his Sovereign and Regal Authority over us.

By the Statutes of 2 and 3 *Ed. 6. c. 1. &* 1 *Eliz. c. 2.* and 14 *Car. 2. Regis*, is ordained an Uniformity of Common-prayer and Service in the Church of *England*, in which Office there are appointed Prayers for the King, and this appointment is grounded on Scripture, and the Law of Nature.

1. *On Scripture.*

The *Israelites* Shouted and said, *God save the King.* 1 Sam. 10. 24.

St. *Paul* exhorteth all Christians to make Supplications, Prayers, Intercessions, and giving of thanks for all men, for Kings, *&c.* 1 *Tim.* 2. 2.

2. *On the Law of Nature.*

Calisthenes of King *Alexander.* in *Curtius.*

Ego feram Immortalitatem precor Regi, ut vita diuturna sit & æterna Majestas.

Unum omnium votum est salus Principis.

Pliny in his Panegyrick to *Trajan.*

And now for a Conclusion to this Tract, I shall add my Prayers, *viz.*

God grant His Majesty our Gracious Sovereign, a Long Life, a Prosperous Reign, Valiant Armies, Faithful Counsellors, Loyal Subjects; and after this Life ended, for a Terrestrial, a Celestial Crown of Glory; And let all their Faces be covered with Shame, that refuse to say with me their Fellow-Subject,

Vivat Rex.

POSTSCRIPT.

HAving apparanted, That the Imperial Crown of *England* is, and was at all Times *de Jure*, (and I hope will be for ever *de Facto*) invested of those fore-mentioned Prerogatives. I shall presume to detain

tain the Reader a while longer, with a Proſpect of ſome other Privileges and Prehemminencies, which were Originally reſerved to the Crown, and are part of the Common-Law of *England*; and they are ſuch as theſe:

Acquittance

1. The King is not bound to offer an Acquittance to a Subject, as he is obliged to offer to the King. 2. *H.* 7. 8. *b.*

Demand of Rent.

2. If the King make a Leaſe for term of Years, reſerving Rent; if the Rent be in Arrear, he ſhall enter without any Demand of the Rent; ſo ſhall not a Common Perſon. 2 *H.* 7. 8. *b. Co. lib.* 4. *Borough's Caſe. Co. lib.* 5. *Knight's Caſe.*

Choſe in Action.

3. The King can grant a thing in Action, and ſo ſhall not a Subject. 2 *H.* 7. 10. *a.* 5 *E.* 4. 8.

Double Intent.

4. The Grant of the King ſhall not enure to a double Intent. 2 *H.* 7. 13. *a. Co. lib.* 1. 52. *a. Alton-Wood's Caſe.*

Title.

5. Where a Title appears from the King, the Court *ex officio*, ought to award for him. 12 *H.* 7. 12. *a. Cro.* 3. *part. Tates v. Driden.*

Diſtreſs.

6. The King may diſtrein for his Services, in other Lands that are not holden of him. 5 *H.* 7. 39. *a.* 13. *E.* 4. 6. *a. Co.* 4. *Inſt. f.* 119.

Money.

7. If Money be paid to the King, and in his Coffers, no Judgment of Reſtitution, as it ſhall in the Caſe of a Common Perſon. 6 *H.* 7. 16. *b.*

8. The

8. The King cannot be ſued, no Action of Covenant lyes againſt him. 12. *H.* 7. 13. *a.* 2. *H.* 7. 3. *b.* 21. *H.* 7. 2. *a.* Action.

9. The King may ſue in what Court he pleaſes, and he may make Choice of his Action. *Co.* 4. *Inſt.* 15, & 17. 12. *H.* 7. 21. *b.* 14. *H.* 7. 23. *b.* 14. *E.* 4. 5. 39. *H.* 6. 26. Election both of Court and Action.

10. The King ſhall not be ſaid to make a double Count or Plea, as a Subject may. 16 *H.* 7. 12. *b.* Double Count or Plea.

11. The King cannot be diſſeized or put out of Poſſeſſion of things permanent, or of Inheritance. Doctor & Stud. *Lib.* 1. *c.* 8. 2. *H.* 4. 7. *b.* *Co. lib.* 6. Green's Caſe, 21. *E.* 4. 2. 4. *E.* 4. 25. *Cro.* 2. *part* the King *v.* Champion *f.* 54. *Cro.* 1. *part* the Queen *v.* Vaughan. Diſſeizing.

12. Where the King comes to an entire thing by Act of Law as Attainder, or by other Act of Law; he by his Prerogative ſhall have the whole. *Co.* 3. *Inſt.* 55. 8. *E.* 4. 4. *Plowd. Com.* 259. *b.* 7. *E.* 4. 7. Hobart's Reports 127. *Cro.* 1. *part f.* 265. Entire things.

13. The entring upon me, by or without Title, he ſhall not be accounted a Diſſeizor, or Abator. 3. *E.* 4. 25. No Diſſeizor.

14. The King ſhall have every Action, that another can have 22. *E.* 4. 48. Action.

15. The King ſhall not pay Tol, Pontage *&c.* 35. *H.* 6. 25. Toll, Pontage.

16. A Diſſeizor infeoffs the King, the Diſſeizee ſhall not enter. *Sans* Petition 35. *H.* 6. 60, & 61. Petition.

The Iſſue tryed at Bar, or by *Niſi prius.*

17. The King may try his Iſſue at the Bar, or by *Niſi prius*, at his Royal Pleaſure, *Cro.* 3. *part. Soutley v. Price* 247.

Render en Valur.

18. The King ſhall never render in value upon Voucher. *Cro.* 3. *part. f.* 76.

Advowſon.

19. If the King have but two parts of an Advowſon, yet he ſhall preſent alone *Hobart's Reports*, Chancellor of *Cambridge. v. Walgrave f.* 127.

Ward-ſhip.

20. If a man hold Lands of the King by Knights Service in *Capite*, and other Lands of other Lords, and dieth, his Heir within Age, the King ſhall have the Ward-ſhip of all the Lands by his Prerogative. *Co. Litt.* 77. *a. Co.* 2. *Inſt.* 391.

Atturnment.

21. A Grant to the King, or by the King to another, is good without Atturnment, by his Prerogative. *Co. Lit.* 309. *b.*

Kings Debtor.

22. A Common Perſon ſhall not have Execution againſt the King's Debtor, untill Agreement for the Kings Debt. *Cro.* 3. *part. Stevenſon's Caſe.*

Sole Founder.

23. The King is ſaid to be Founder, though another joyn with him in the Foundation. *Co.* 2. *Inſt.* 68.

Clerks Omiſſion.

24. The Omiſſion of the Clerk ſhall not prejudice the King. *Cro* 3 *part.* 349.

Paroll.

The King may preſent by parol. *Cro.* 2. *part. v.* 248.

Abatement of Writs.

26. If the King bring an Action, and the Parties die, the Writ ſhall not abate. *Cro.* 2. *part. Dominus Rex. v. Web.* 481.

27. Though

27. Though a Statute be extended, yet after the King comes before the *Liberate* he ſhall be ſerved firſt. *Hobarts Reports. Sheffield. v. Ratcliffe.* 339. King ſerved firſt.

28. When the Title of the King and a Subject concur, the King's Title ſhall be preferred. *Co. lib.* 9. *Quickes Caſe. lib.* 4. *Le Caſe de Wardens.* 55. *a. Plowden's Com. Hale's Caſe. Co. Litt.* 30. *b.* Two Titles concurring

29. The King may grant a Protection to protect his Debtor. *Co. Litt.* 131. *b.* Protection.

30. If the King give Land to a man with a Woman of his Kindred in Frank-marriage, and the Woman dieth without Iſſue; the man in the King's Caſe ſhall not hold it for his Life; becauſe the Woman was the Cauſe of the Gift; but otherwiſe it is in the Caſe of a Common Perſon. *Co. Litt.* 21. *b.* Frank-marriage.

31. Plenarty in a *Quare impedit* is no Plea againſt the King. *Co. Litt.* 344. *b. Co.* 2. *Inſt.* 361. Plenarty.

32. If the King do preſent to a Church, and his Clerk be admitted and inſtituted; yet before Induction, the King may repeal and revoke this Preſentation. *Co. Litt.* 344. *b.* Preſentation to a Church.

33. Any man may challenge for the King, ſhewing particular Cauſe. *Co.* 2. *Inſt.* 431. Challenge.

34. By Order of the Common Law, the King for his Debt had Exemption of the Body, Lands, and Goods of the Debtor. *Co.* 2. *Inſt. f.* 19. Kings Debt.

35. the King can grant a thing that is not in him, as he may grant, that I ſhall be diſ- Grant of a thing not in eſſe.

charged of a 15. granted at the next Parliament. *6. H. 7. 5. a. 32. H. 6. 9. 35. H. 8. Dyer 56. b.*

King deceived.

36. If the King be deceived in his Grant, the Grant is void, notwithſtanding the words, *Ex Gratiâ ſpeciali, ex certâ Scientiâ,* and *ex mero motu*, which do imply Bounty, Knowledge, and done without Suggeſtion. *Co. lib. 6.* Green's Caſe. *29. b. Co. lib. 1. 43. b. 44. a. 46. a.* Alton-wood's Caſe.

37. The Privilege of Parliament, of the Cinque Ports, or any other Place doth hold between Subject and Subject; but no Privilege or Franchiſe, in Caſe of Treaſon, Felony, the Peace, or Impriſonment, can be againſt the King; and therefore to diſpute his Commands is not to diſpute the Juriſdiction, but the Power and Prerogative of the King, and his Courts at *Weſtminſter. Co. 4. Inſt. 25. 215. Cro. 3. part. Soutley v. Price 24. Cro. 2. part Bournes* Caſe. *Cro. 1. part. Criſpe v. Verral.*

Kings Palace.

38. The Kings Palace is a privileged Place from all Summons, and Citations. *Co. 3. Inſt. 141.*

To come to a Concluſion; The Law of *England* hath ſo much Reverence and Honour for our King, that it alloweth him (as Gods Vicegerent on Earth) divine Attributes, as,

1. Immortality; the King never dies, *Co. Litt. 9. b. Co. lib. 6.* Le Caſe *de* Souldiers. *27. a. Co. 3. Inſt. f. 7.*
2. Omnipreſence; He is ever preſent in Court. *1. H. 7. 13. b.*

3. Perfecti-

3. Perfection; The King cannot be ſaid to be a Minor. *Co. Litt.* 43. *ab Co.* 4. *Inſt.* 209, & 210.
4. Omniſcience; *Rex omnia Jura habet in Scrinio pectoris ſui. Co. Litt.* 99. *a.*
5. Truth and Wiſdom; *Rex fallere non vult, falli autem non poteſt.*
6. Juſtice; the King can do no Wrong. *Co. Litt.* 19. *b. Co. lib.* 1. 44. *b.* Alton-wood's Caſe, *Plowdens Com.* 246.
7. Majeſty.
8. Sovereignty and Power.

The Cloſe of all ſhall be this.

We read in Hiſtory, that the Heathens by the very Inſtinct of Nature, had a marvellous Reverence and Veneration, for their Princes; If ſo, what a Shame is it, for thoſe Chriſtians whom men call Quakers, That neither the Laws of Nature, of God, nor Man, are prevalent enough to perſwade them to vail their Bonnets, when they appear in our Courts of Judicature, where the King reſides by Repreſentation? but we need not wonder at this, when they are ſo impudent as to be covered (as I have been informed,) where the King is perſonally preſent, contrary to the

Curtius; *Regium nomen Gentes, quæ ſub Regibus, pro Deo colunt*: Again, *Ingenita Macedonibus erga Reges ſuos veneratio.* Scripture, 1. *Sam. c.* 24. *v.* 8. And when *Saul* looked behind him, *David* ſtooped with his Face to the Earth, and bowed himſelf. 2. *Chron. c.* 29. *v.* 20. The People bowed down their Heads, and worſhipped the Lord and the King. *Vide Gen. c.* 23. *v.* 7. 12. The Carriage of *Abram* towards the Children of *Heth.*

laudable Custom of the Sacred Palace; and what that Custom is, let Sir *Thomas Smith* inform those Miso-Monarchists, *viz.*

Lib. 2. c. 4. Of the Commonwealth of England.

— No man speaketh to the Prince, nor serveth at the Table but in Adoration and Kneeling: All Persons of the Realm be bare headed before him: insomuch that in the Chamber of Presence, where the Cloath of Estate is set, no man dare walk; yea though the Prince be not there, no man dare tarry there, but bare headed.

The

THE Author's Sentiments TOUCHING GOVERNMENT.

THE Author being a great Admirer of Monarchy (especially that of *England*, it being no way despotical, nor in any Measure Arbitrary, but Paternal and Politick) conceives, It will not be impertinent, in this Juncture, to give the Reader a View of his Thoughts, touching the three Species of Government, *viz.* Monarchy, Aristocracy, and Democracy; and thus he proceeds.

There is a false Principle laid, and taken for granted, namely, *That Government in general is the Ordinance of God, because the Edict of Nature; for that men cannot live without Society, and*

no Society can be ſafe, or durable, without Laws, and Laws are unprofitable without Magiſtrates: But (ſay they) the Determination of the Government, and the ſeveral Kinds of it, whether by one, or by few, or by many, is the Invention of Men; So that Monarchy is no otherwiſe the Ordinance of God, than is Ariſtocracy and Democracy. This ſurely is a falſe Foundation, that they lay; for St. *Paul* ſpeaking of Kings, calls them the Ordinance of God, and St. *Peter* requires Subjection unto them, *for the Lords Sake*; and he knew of no other Governours, but ſuch as were ſent by the King, and in that Reſpect to be obeyed. Yea, in the whole Volume of God's Book, there is not one word to commend or doth ſo much as favour either *Ariſtocracy* or *Democracy*.

Rom. 13. *v.* 1, 2.

1 *Pet.* 2. 13.

This being premiſed, the Author owns theſe Particulars following to be his real Sentiments.

1. That God is the immediate Author of Sovereignty in the King, and that he is no Creature of the Peoples making. The making of a King is in Scripture aſcribed to God; for Kings

in Scripture are called God's Kings, and the Lords anointed, *Christi Domini, & Christi ejus*, above twenty times; but we no where read, *Christi Populi*, nor *Christi Pontificis*; To shew that they are dependent from none, but from God only. And therefore in all Christian Kingdoms, it hath been a Custom at the Coronation of a King, to set the Crown upon the Altar, and from thence to take it, and set it upon his Head, to shew that Power is given him of the Lord, and Sovereignty from the most High. And so much all Kings do profess as God's anointed, and styling themselves in their Writs, *Dei Gratia*; but now *Jesuits* and *Puritans* will teach them to Change their Style, and for *Dei Gratia*, to write *Favore Populi*.

2 That God Instituted the Government of *One*, in the Creation of Mankind (for he only made Mankind of *One*) that there might be not a *Democracy*, but a Kingdom.

3. That if God had created at first more than One, all these equally should have had Rule over their Posterity; but he Created only One, thinking

in

in his Wisdom not to make two Independents, and liking best of all Government of Mankind, *The Sovereignty of One.*

Gen. 1. *v.* 27, 28. 4. That in the Person of that *One Adam*, God fixed an Universal Dominion, and Sovereignty over all Creatures; and that this Universal Power was given to *Adam*, not as *Father*, *Husband*, nor *Master of a Family* is manifest; for he was neither Father, Husband, nor Master, there being no Man or Woman in the World at that time.

5. That Sovereign Power being thus fix'd in the Person of *Adam*, before the Woman was made, and before he had Children, or subject to Govern, there was never any time wherein Men (except *Posthumus* Kings) were born out of Subjection: If so, where then is the Truth of that Maxim, *Every Man is born a Free-man in the Forest?* 'Tis true, none by Nature cometh into the World, in the Condition of a Slave; Nature in this is equally indulgent to all: But on the other side, it's as true, no man is born in that Con-

Condition, to be free from Government; but with his Natural Being, cometh into the World, ſubject to ſome. Every Man is born ſubject to his Father, of whom immediately, next under God Almighty, he hath his Exiſtence in Nature. And if his Father be Subject of another, he is born Subject to his Father Superiour.

6. That this Sovereignty was not perſonally fix'd in *Adam*, nor was it loſt by his Fall; or that the State of Sin requireth, as more convenient for it, another *Species* of Government by more than *One*: After the Fall it is declared tranſmiſſible from *Adam* to the Firſt born. *Gen. c.* 4. *v.* 7. *Unto thee ſhall be his Deſire, and thou ſhalt Rule over him.*

7. That if *Adam* had continued in the State of Innocency, there ſhould have been Government and Superiority; and this no doubt had been the Government of *One*, which we call Monarchy.

8. That if *Adam* had not fallen, *Ariſtocracy* or *Democracy* had never appeared

appeared in the World. It was Sin that gave Occasion to these Governments, and it was the Corruption of Monarchy, that produced them in the World, or rather the perverse and fickle Disposition of the People, who are impatient of Subjection, prone to Change, and desirous of Innovation; wherein they were stirred up too, by the Instigation of Ambitious Men, who sought to raise Fortunes unto themselves, by Changing of the Government. In a Word, There are those that assert, that for above 3000 years after the Creation (excepting the *Lacedemonian Duarchy*) was no Government in the World but *Monarchy*.

9. That Monarchy, or Regal Government is of all other the most perfect Regiment, as carrying a Resemblance of the Government of the whole World by *One*, that is, God Almighty.

10. That the Sovereignty of *One*, is many ways the best Government. It is best for Order, best for Peace, best for Strength, best for Stability and Duration;

raion; and in a word, best for Facility of Administration.

Lastly, That of Regal Governments, Hereditary is much better than Elective Monarchy, in Relation both to the Subject, and also to the Crown and Patrimony thereof. The Miseries consequent upon the Election of either Native or Stranger, are many; and so are their Inconveniencies that attend the Rights, Patrimony and Dignity of the Crown, in an Elective Monarchy. That this is so, Let the Reader but consult Historians, and they will make it as evident and clear, as the Sun-shine at Noon-day.

Now Reader, if these Sentiments be Consentaneous to Truth, and consistent with the Sovereignty in *One*; then surely these following Principles, are not only false, but pernicious to Kings, prejudicial to the just Rights of *Monarchy*, and inconsistent with that Loyalty, which (by the Laws of Nature and Scripture) is due unto them, *viz.*

That *the Direct and Primary Power Supreme, whether Civil or Ecclesiasti-*

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cal is in the Pope, as Christs Vicar upon Earth, immediately from Christ derived unto him, and from him, to all Kings whatsoever, mediately by Dependence and Subordination.

That *all Power is Radically and Originally seated in the Community, God having made it the first Subject in which it is seated.*

That *Power is from the Multitude by way of Collation and Donation to One as in Monarchy, to some as in Aristocracy, to many as in Democracy; so that immediately it is from the People, and mediately from God, and not so much by Collation, as by Approbation.*

That *the People may change Monarchy into Aristocracy or Democracy, or à Contra, which way you will.*

That *this Power is derived to the King from the People, by way of Communication, or Commutation, but not by way of Privation; that is, howsoever the People Communicate this Sovereignty to the King by Trust, yet they denude not themselves of this Sovereignty, but in some Cases may actually resume it; may in Cases of Defailance, exercise it, and sup-*

ply

ply the Defects of Government in the King, erecting Tables, authorizing Parliaments, appointing Close Committees, Making and Sealing, Subscribing and Swearing Covenants, &c.

That as this Sovereign Power is Originally, Formally, Radically inherent in the People; *So it is Reductive, by way of Reduction, theirs, that is, in Case of Total Defailance of a King and his Posterity. This Right Reverts and returns to the Communities again.*

That a *Private Man may make away his Personal Liberty, and inslave himself to another*, and consequently a Multitude or People may do the like, and invest a King with Sovereignty.

That *neither Scripture nor nature teacheth, That Monarchy, Aristocracy or Democracy, or any other imaginable kind of Government is the necessary Government of Humane Kind or Society; but that the Specification and Determination is arbitrary, and of the Constitution of Man.* To this same purpose, is that other; *Neither the Law of God nor Nature demonstrate why this Man more than the other, he than a third; why these more*

than

than those, should have the Sovereign Power.

That there is such a Multiplication of Variety and Differences of Kings and Royal Power in the Kings of the World; this must necessarily argue, Kings are of the Peoples making, and their Power is in that Portion and Proportion, as it pleaseth the People to intrust them.

That all humane Societies are perfect Republicks, and as they have in them originally a Power to appoint their Government, and Governours, so they have a Power to preserve themselves, and in Case of Mis-government, they may resume their Natural, Native, and original Power, and rectifie by themselves what is amiss; otherwise it must be, that God and Nature have left them remedileſs.

That (*quisque nascitur Liber*) every one is born a Free-man, *i. e.* exempted from Subjection.

That (*quod efficit tale, est magis tale*) *that which maketh any thing such, or such, is in it self much more such or such*; 'Tis assumed, but the People make the King

King give him all the Power and Majesty he hath. The People are above the King, with a *Sublata Ceremonia quid sit Rex.*

That all Government and Superiority in Governours is principally, nay only for the Subjects and Inferiours Good.

That a King cannot be without the People but the People may be without a King.

That Protection and Subjection are of equal Extent.

That the King is, *universis minor, singulis major.*

That the Charter of Nature intitles us to our Defence against Kings, or that the Law of Nature will justifie all Resistance against Injuries, and for our own Preservation; that no People is so mad as to contract to their Ruine, or agree to be ill governed.

That a King at his Coronation, Swareth and Covenanteth with his Subjects, which if he perform not, he is punishable, dethronable.

That in a Monarchy, *The Legislative Power is communicable to the Subject, and*

is not radically in Sovereignty in one, but in more; or if you will,

That there is a Mixture or Coordination in the Supremacy; that the Monarchy is compounded of three coordinate Eſtates; whence 'tis inferred, *Coordinata ſe invicem ſuppleunt*, Coordinates ſupply each others Failings; therefore if one refuſe, the other two are inabled to do it without them.

That Kings are Gods, not Chriſts Lieutenants upon Earth; upon this ſame Principle, the *Romaniſts* and *Puritans* erect in every Kingdom another Sovereign, not only beſides the true Sovereign, but alſo above; the former will have it to be in the Pope, the latter fixes this Sovereignty in the Preſbytery.

To conclude, we read of a great King, who going in his Barge, his Crown fell into the Water: the Bargeman ſwam after it, and having recovered it, put it on his Head, only that he might have the Uſe of his Hands, to ſwim unto the Barge: the King gave him a Talent of Silver, for ſaving it,

it, but cut off his Head for wearing it. What then ſhall be done to thoſe who would forceably uſurp the Kings Crown, and all Rights of Majeſty, and wear his Diadem; not as the Bargemen did, to ſave it for him, but to deprive him and his of it for ever?

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